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# Google versus China



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## ***Wall Street Journal: January 25, 2006***

“Google Inc. this week will launch a Chinese search service, agreeing, after much internal debate, to censor its own search results in order to comply with Beijing’s strict limits on access to information.” . . .

In running Google.cn, Google said, it will remove links to sites believed offensive to the Chinese government, on the understanding the government will then allow Google to use computer servers located in China. . . .

“Google Senior Policy Counsel Andrew McLaughlin said: ‘While removing search results is inconsistent with Google’s mission, providing no information (or a heavily degraded user experience that amounts to no information) is more inconsistent with our mission.’”

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## ***Wall Street Journal: January 25, 2006***

“Last week, the company said it would ”vigorously” oppose a U.S. . . . motion to . . . to provide data about consumer Web searches. . . . Google argued . . . that turning over the information would create an unacceptable perception it’s amenable to turning over private information about it’s customers.”

“In the two cases, Google’s divergent approaches appear to be a matter of where it has legal recourse to fight perceived wrongs. Google can fight the U.S. government in court and get a fair hearing, but its options in China are far more limited.

“In China, the question, says Gelman, is: ‘Do I say “no thank you” and walk away, or do I engage and operate by the rules China sets out?’”

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## People Noticed

- Some protests over censorship; some calls for a boycott (*Boston Globe*, Jan. 28, 2006)
- Congress held a hearing; Google declined to attend
- But — more complaints about Yahoo for helping identify one of its users

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## Bill Gates' Prophecy

“Over time, the increasing use of technology and the growth of Chinese-made innovations will ease these problems, Gates told an audience of business leaders at the World Economic Forum.

“I think (the internet) is contributing to Chinese political engagement. . . access to the outside world is preventing more censorship,’ Gates said, referring to China’s restrictions on politically sensitive internet Web sites.” (*Dow Jones Newswires*, Jan. 27, 2006)

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## A Positive View of Google

“*Yahoo* sold its soul and is a national disgrace. It is still dissembling. . .

“*Microsoft* has also been cowardly, but nothing like *Yahoo*. *Microsoft* responded to a Chinese request by recently shutting down the outspoken blog of Michael Anti. . .

“*Cisco* sells equipment to China that is used to maintain censorship controls, but as far as I can tell similar equipment is widely available, including from Chinese companies like *Huawei*. *Cisco* also enthusiastically peddles its equipment to the Chinese police. . .

“*Google* strikes me as innocent of wrongdoing. . .

“So think of the Internet as a Trojan horse that will change China.”

Nicholas Kristof, *New York Times*, Feb 19, 2006.

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## Issues

- Is engagement better than a boycott?
- Was Google's solution — adding an alert that results were censored? — helpful?
- What role did business considerations play in Google's policy?
- Were Gates and Kristof naive or will they ultimately be proven correct?
- What about Chinese law?

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## 18 USC 2703

(c)(1) A governmental entity may require a provider . . . to disclose . . . information pertaining to a subscriber . . . service (not including the contents of communications) only when the governmental entity— . . .

(B) obtains a court order for such disclosure under subsection (d) of this section;

(c)(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the— . . .

(C) local and long distance telephone connection records, or records of session times and durations;

(d) A court order . . . may be issued by any court . . . . . [if] there are reasonable grounds to believe that . . . the records or other information sought, are relevant and material to an ongoing criminal investigation.

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## 18 USC 2709

(a) **Duty to Provide.**— A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section

(b) **Required Certification.**— The Director of the Federal Bureau of Investigation . . . may

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider . . . [that the] billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities

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## The FBI and Journalists

- U.S. law requires balancing First Amendment issues with law enforcement needs when getting journalists' phone records
- A subpoena can be issued, but only with the approval of the Attorney-General
- Instead, a Supervisory Special Agent issued an “exigent circumstances” letter for emergency access — but the required court order or National Security Letter never happened
- Good personal relationships between the FBI agents and phone company personnel, as well as close physical proximity, made it easier
- DoJ: No laws were broken, but mistakes were made. . .

(Disclaimer: this is breaking news; our analysis is incomplete and tentative as of yet.)

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## Eric Schmidt on Google and China

“Google’s chief executive, Eric E. Schmidt . . . said on Wednesday that the company had not lobbied to change the censorship laws and, for now, had no plans to do so.

”I think it’s arrogant for us to walk into a country where we are just beginning operations and tell that country how to run itself.’ . . .

“‘We had a choice to enter the country and follow the law,’ Mr. Schmidt told the foreign reporters. ‘Or we had a choice not to enter the country.’ . . .

“Mr. Schmidt said that while the company had not ruled out lobbying with the Chinese on the matter, it had no immediate plans to push for a loosening of restrictions.”

*(New York Times, Apr 13, 2006)*

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## The Law

- What is the obligation of a corporation (or person) to follow the law?
- When is breaking the law ethical? *obligatory*?
- If laws conflict, which law should be followed?
- “The subcommittee’s chairman, Representative Christopher H. Smith, Republican of New Jersey, plans to introduce legislation by week’s end that would restrict an Internet company’s ability to censor or filter basic political or religious terms — even if that puts the company at odds with local laws in the countries where it now operates.” (*New York Times*, Feb. 15, 2006)

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## Google's Statement

- “Like many other well-known organizations, we face cyber attacks of varying degrees on a regular basis. In mid-December, we detected a highly sophisticated and targeted attack on our corporate infrastructure originating from China”
- “we have evidence to suggest that a primary goal of the attackers was accessing the Gmail accounts of Chinese human rights activists”
- “we have discovered that the accounts of dozens of U.S.-, China- and Europe-based Gmail users who are advocates of human rights in China appear to have been routinely accessed by third parties.”
- “These attacks and the surveillance they have uncovered—combined with the attempts over the past year to further limit free speech on the web—have led us to conclude that we should review the feasibility of our business operations in China. We have decided we are no longer willing to continue censoring our results on Google.cn”

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## What Did Google Really Say?

- There were sophisticated attacks on many companies — but that isn't new
- Some of the attacks were directed at dissidents and activists — which also isn't new (though one was a Stanford undergrad this time: [http://www.mercurynews.com/top-stories/ci\\_14195105](http://www.mercurynews.com/top-stories/ci_14195105))
- They're *planning* to stop censoring results, even if that means shutting down `google.cn` — but what is the relationship to the attacks?

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## Is Google Standing on Principle?

- Google has been losing market share to Baidu. Is this just a way to cut their losses?
- Better yet — cut losses, and get lots of good PR in the U.S. — and among some Chinese
- Does "don't be evil" square with Google's privacy policies?
- Are those why Google needs some good ethics PR?

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## Chinese Reaction

- The government has said little, but has censored Google's statement
- Reaction among Chinese has varied: "Its not Google thats withdrawing from China, its China thats withdrawing from the world" vs. "I think Googles departure from the Chinese market would be a big loss to Google, though not as big a loss to China because Baidu and other search engines are still rising" (*NY Times*, Jan. 13, 2010)
- Issue is still being downplayed in China, but being treated as commercial rather than political (*NY Times*, Jan. 20, 2010)
- "Google Inc.'s complaints about cyber attacks and censorship in China should not be 'over-interpreted' or linked to Beijing's bilateral relations with the U.S., Chinese Vice Foreign Minister He Yafei said" (*WSJ*, Jan. 21, 2010) Thursday.

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## Was it a Business Decision?

- China has more Internet users than any other country in the world: 338M, by some reports. Is Google turning its back on a huge market?
- If they just withdrew, they could retry some day, after fixing their business strategy
- Withdrawing this way, though, will definitely anger the Chinese government. Will they *ever* be allowed back in?
- Few analysts think that China will back down on censorship

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## ***Wall Street Journal, Jan. 14, 2010***

“Google Inc.’s startling threat to withdraw from China was an intensely personal decision, drawing its celebrated founders and other top executives into a debate. . .

“Mr. [Sergei] Brin has long confided in friends and Google colleagues of his ambivalence in doing business in China, noting that his early childhood in Russia exacerbated the moral dilemma of cooperating with government censorship. . . Over the years, Mr. Brin has served as Google’s unofficial corporate conscience, the protector of its motto ‘Don’t be Evil.’

“[CEO] Mr. [Eric] Schmidt made the argument he long has. . . that it is moral to do business in China in an effort to try to open up the regime. Mr. Brin strenuously argued the other side, namely that the company had done enough trying and that it could no longer justify censoring its search results.”

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## Fiduciary Duty

“A fiduciary duty is an obligation to act in the best interest of another party. For instance, a corporation’s board member has a fiduciary duty to the shareholders. . .

“When one person does agree to act for another in a fiduciary relationship, the law forbids the fiduciary from acting in any manner adverse or contrary to the interests of the client”

(from [definitions.uslegal.com](http://definitions.uslegal.com))

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## Corporations and Morality

- Does a corporation have a legal right to act on moral principles?
- Do the shareholders benefit from this decision?
- Could it have been moral *and* profitable, at least in the long run?

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# IBM and the Holocaust

- Some have claimed that the Nazis used IBM punched card equipment to organize the Holocaust (*IBM and the Holocaust: The Strategic Alliance Between Nazi Germany and America's Most Powerful Corporation*, Edwin Black, Crown Publishers, 2001)
- **“What do you think accounts for IBM’s association with the Nazis? What was their motivation? It was never about the Nazism. It was never about the anti-Semitism. It was only about the money.”**  
([http://news.cnet.com/Probing-IBMs-Nazi-connection/2009-1082\\_3-269157.html](http://news.cnet.com/Probing-IBMs-Nazi-connection/2009-1082_3-269157.html))
- Others disagree (F.W. Kistermann, “Locating the victims: the nonrole of punched card technology and census work”, *IEEE Annals of the History of Computing* 19:1, 1997.

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## Issues

- Which is better, engagement or boycott?
- Clearly, there is some line a corporation shouldn't cross — but what is it?
- Is the proper response to evil to ignore it or to confront it?
- Are corporations different than people? Should they be?

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## Hacking Attempts

- Was it “hacking”? Was it “espionage”? Was it law enforcement?
- Was it legal or not? According to whose laws?
- Do other countries do the same thing? Ask your favorite search engine for  
FBI "Magic Lantern"
- If purportedly legal, under what legal standard? Need there be an international consensus?

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## The Cyber Angle

- What issues here are uniquely “cyber”?
- Deciding whether or not to do business with an unpleasant government is an old issue
- Remote jurisdiction?
- Scale of espionage?
- Massive information handling?