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## Yahoo: Torture Case Has No Place in American Courts




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**Yahoo has taken center stage in the legal, moral and ethical debate surrounding the accommodations that many companies are making to China's government in order to do business there. The search giant claims a U.S. court has no jurisdiction in the case of a Chinese man who was jailed and allegedly tortured for political reasons after Yahoo turned over his identifying information.**

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Yahoo (Nasdaq: YHOO)  is asking a federal court to dismiss a lawsuit filed by a human rights organization that claims the Internet portal's cooperation with the Chinese government resulted in the torture and 10-year jail term of Wang Xiaoning.

Xiaoning had used a Yahoo account to anonymously post to the Web materials relating to the Tiananmen Square massacre. Yahoo turned over identifying details for the account at the request of the Chinese government, which subsequently arrested Xiaoning.

The [World Organization for Human Rights USA](#) filed the suit in April, with Xiaoning's wife also named as a plaintiff. In addition to the U.S.-based Yahoo, its Hong Kong subsidiary and Chinese partners were named as defendants.

Journalist Shi Tao was later added as a plaintiff in the suit.

### Yahoo: US Laws Don't Apply

In its latest court filing, Yahoo argued the case should be dismissed on the grounds that it doesn't fall under the jurisdiction of the U.S.

"This is a lawsuit by citizens of China imprisoned for using the Internet in China to express political views in violation of China law," it said. "It is a political case challenging the laws and actions of the Chinese government. It has no place in the American courts."

Furthermore, the company argued, it had no control over China's laws or the manner in which its government enforces them. The people prosecuted under those laws "assumed the risk of harm when they chose to use Yahoo China e-mail 📧 and engage in activity they knew violated Chinese law," it said.

The plaintiffs are basing their claims on the U.S. Alien Tort Statute and the Torture Victim Protection Act. The suit also cites California state laws -- including prohibitions against battery, false imprisonment, assault, intentional infliction of emotional distress, negligence and negligent supervision -- and provisions of the California Business and Professions Code.

Finally, the complaint says the defendants breached United States law under the Electronic Communications Privacy Act "by exceeding their authorization to access and control highly private and potentially damaging information concerning plaintiffs' electronic communication ... [and] by unlawfully and knowingly divulging plaintiffs' electronic communication contents and user information."

### **Settled Issues**

While these laws do apply in the United States, what matters is that they don't apply in China, said Peter Vogel, a partner with Gardere Wynne Sewell. "Assuming the server 📧 and operations are in China, this is a separate company, a separate Web site, and separate business."

In essence, he told the E-Commerce Times, Yahoo's argument is correct.

A few years ago, the case may have had a greater chance of success as the legal system rushed to catch up with the Internet. Now, though, the plaintiffs are battling established precedent, Vogel observed.

Ironically, it was Yahoo that raised one of the earliest challenges to the question of cross-border legal jurisdiction for global e-commerce 📧 operations, when a French court imposed an injunction on its auction sales of Nazi memorabilia.

"When that case got to the Ninth Circuit, it said it didn't have jurisdiction over the French court," Vogel recalled.

### **Everything in China Is Negotiable**

While Yahoo is likely on safe legal ground, its prospects before the court of public opinion are a bit more dubious. "This is an ethical issue," Usha C. V. Haley, professor of international business and the director of the Global Business Center at the University of New Haven, told the E-Commerce Times.

Yahoo is hiding its profit motivations behind a legalistic argument that paints the company as helpless against Chinese bureaucracy, she said. "Everything -- and I mean everything -- is negotiable when you are doing business in China."

At the very least, Haley added, Yahoo should alert users that anything and everything might be handed over to government officials. Another option would be to anonymize users' identities so it would be unable to provide such information when requested.

"These companies have more wiggle room than they care to admit," Haley concluded.

However, that too is open to debate. "There appears to be little way for Yahoo to do business in China in a way that would satisfy human rights concerns," Jonathan Handle, a partner with Troy & Gould, told the E-Commerce Times. "Sure, they could anonymize the IP (Internet protocol) addresses, but that would only lead to a request by China to stop doing that."

This case will ultimately find its way before the Supreme Court, Handle predicts. "Ultimately, it is a very political and ideological case. Should a company be held liable for the actions of a foreign government? That is what the plaintiffs are saying."

When viewed through that prism, he said, it is hard to find Yahoo liable. On the other hand, though, "it was obvious what would happen once the government got this information. Yahoo should bear some responsibility." **ECT**

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