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The Google Case: When Law and Ethics Collide

A fundamental precept for international companies is compliance with the law of the nation in which they do business.

But a recurrent dilemma is what happens when that "national law" (e.g. state censorship in China) collides with the corporation's global ethical standards (e.g. "no censorship" for a media company)?

The answers are not easy---or uniform. They depend, greatly, on the corporation's deeply held values and on strongly held views of important stakeholders (shareholders, creditors, employees, customers, suppliers).

The recent Google announcement about re-evaluating its business in China demonstrates how acute the dilemma can be. In 2006, it launched a Chinese language web-site in China and, contrary to its global ethical standards opposing censorship, agreed to Chinese government demands to eliminate links which the authorities found objectionable.

For example, when a web-surfer clicked searched "Tiananmen Square" on Google's Chinese language web-site in Los Angeles, reports of the 1989 demonstrations popped up. Not so if the same surfer entered the same words on Google's Chinese language site in Beijing (at various times either nothing or innocuous history came up).

Yesterday, Google reversed course. In a post on its website from its chief legal officer, Google said that recent, repeated hacker attacks originating from China had compromised its intellectual property and threatened the confidentiality of "gmail accounts of Chinese human rights activists." These events, Google said, raise issues of security, privacy and global free speech.

As a result, the Google said it plans to review "the feasibility of our Chinese operations" Then it delivered the punch line:

"We have decided we are no longer willing to continue censoring our results on Google.cn, and so over the next few weeks we will be discussing with the Chinese government the basis on which we could operate an unfiltered search engine within the law, if at all. We recognize that this may well mean having to shut down Google.cn, and potentially our offices in China....The decision to review our business operations in China has been incredibly hard, and we know that it will have potentially far-reaching consequences."

As of this writing, it is hard to see how Google and China will arrive at new terms, and so it is likely that Google will give up its current one-third share of China's 340 million web-users (most of the other two-thirds are served by Chinese search engine, Baidu).

The reason for Google's switch? Allowing censorship of links is one thing; but standing by while personal identities of gmail users are uncovered is another. Several years ago, Yahoo was raked over the coals by U.S. media and politicians for helping Chinese police identify a Chinese journalist. The journalist allegedly relayed to an overseas recipient the substance of a secret government order using his Yahoo email. He was sentenced to ten years in prison.

History illuminates different approaches to these conflicts between a corporation's compliance with national law and its adherence to global ethical standards.

Two limiting cases are Nazi Germany in the 1930s and apartheid South Africa in the 1980s.

Although the history is extremely complicated, many American multi-national companies---IBM, Kodak, GE, DuPont GM, Ford--had either wholly-owned or partially owned subsidiaries operating in Germany from Hitler's take-over in 1933 to the outbreak of war in 1939. As a general matter, they continued to operate despite the impact of increasing discrimination in law and enforcement against religious groups, ethnic groups and other minorities. One plausible explanation: inaction resulted from their profitability and own weak ethical standards combined with either unawareness or indifference in pre-war America to Hitler's rising power and inhumane practices.

By contrast, many American companies in South Africa during the 1980s were publicly opposed to apartheid due, in important part, to the civil rights revolution of the 1960s in the U.S. and the broadly shared view among many corporate stakeholders that state-sanctioned racial separation and discrimination was morally wrong and commercially intolerable.

Many companies adopted the Sullivan principles or a similar set of precepts which, contrary to South African law, required non-segregation and equal treatment in the workplace -as well as a further commitment to seek change in South African law. (After the U.S. and European

governments enacted tough economic sanctions, many international companies stopped doing most business in South Africa---an important factor in apartheid's demise.)

If we move from the past to the present, China itself illustrates a range of conflicts between national law and corporate values, for many companies beyond Google.

At one extreme, despite their support for western-style civil rights and civil liberties, most international businesses headquartered in developed nations are willing to do business in China's autocratic, repressive political system. The reasons are many: profits, growing opportunity, a sense that Chinese economic liberty (if not political freedom) is growing, a reluctance to draw lines about where to do business based on broad geopolitical assessments (unless the U.S. government has imposed formal sanctions or prohibitions) and lack of strong, uniform sentiment in the United States against economic engagement (although there are plenty of critics of China and U.S. business, to be sure).

At the other end of the spectrum, businesses act carefully on a case by case business when Chinese law conflicts with global standards in very direct and immediate ways. For example, in my own experience at GE, we were faced with a Chinese law enforcement demand to review the contents of all computers of all employees at a GE facility which had employed a member of Falun Gong who had been arrested in Tiananmen Square for demonstrating against the government. The authorities wanted to determine if other GE employees were members of Falun Gong.

We told the Chinese authorities that such a request violated our global ethical standards protecting employees' right to privacy and religious freedom. We also noted that, like most companies, we had a world-wide policy against proselytizing for any cause in the workplace, although we viewed it as the employee's personal choice to support any cause they wished outside the work place perimeter. We never had to decide whether to resist the request or publicly protest it. On a private basis, we were able to convince enforcement superiors that it did not make sense to have a conflict over this hot-button issue and the request, while not withdrawn, was not pressed.

But we recognized that such a result, which avoided a choice between law enforcement and global ethics, was possible because there had been virtually no public attention to the matter and because it only involved one facility with several hundred workers.

Clearly, a case like Google's which involves huge publicity, the operations of a company across China, and a fundamental conflict between Chinese law and Google's newly re-emphasized global standards cannot be resolved in such a way.

Indeed, Google's remarkable statement yesterday will highlight for many corporations---not just in China but in many other difficult business environments around the world (Russia? Nigeria?) -

--the importance of seeing clearly, before others do, the collision between country law and company ethics and thinking ahead about how to resolve them in light of company values and stakeholder pressures.

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