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Human Rights as Ethical Imperatives for Business

The UN Global Compact's Human Rights Principles

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The subject of business and human rights is one of the fast developing areas in the broader discussion on business ethics and corporate responsibility both in practice and in academia. Today, an ever-growing number of companies are adopting formal human rights policies and, partly as a consequence and partly as an underlying cause, a rather diverse and dynamic discourse has developed on the subject. Needless to say, it has not always been this way. Until recently, human rights have arguably played a rather negligible role in the decision-making processes and strategic outlooks, let alone business plans, of corporations. Some would say that overall, corporations have been much more creative in finding ways to suppress and violate human rights for their own benefit than in finding innovative solutions for their protection and realization. Thus, approaching questions of corporate responsibility specifically through the lens of human rights is a fairly recent occurrence, and it was not until the mid-1990s that a systematic debate on business and human rights started to evolve. The title of Peter Muchlinski's (2001) influential article "Multinational Corporations and Human Rights: Is There a

Problem?” reflects the state of the debate at that time: even only a decade ago, we were still debating whether or not there actually was something to discuss in the intersection of business and human rights.

Once the question is asked, however; the conclusion that there is indeed a problem seems inevitable. Concordantly, the difficulty and subsequent core concern at the heart of what we now call the “business and human rights debate” (Chandler, 2003; Ruggie, 2007, p. 839) is not so much to identify the problems that occur in the intersection of business and human rights, but to make a case for why these problems should actually matter to business. After all, even in cases in which corporate abuse is evident, the conventional view has been that this is not primarily the corporation’s own problem, but rather that of the respective government. In other words, responsibility for corporate human rights violations is not primarily to be assigned to the corporation itself, but to the government that has the obligation to protect its citizens from such corporate abuse. Thus, corporate human rights violations have commonly been seen primarily as a failure not of corporate, but of governmental responsibility.

The view that the responsibility for the protection and promotion of human rights rests with governments alone has dominated human rights thinking in the past. As a consequence, all other, that is nongovernmental, institutions have been perceived to have merely indirect human rights obligations, insofar and to the extent as they are assigned to them by the domestic laws of the countries in which they operate (Cragg, 2010, p. 267; United Nations, 2007, p. 12). However, this focus has come under increasing scrutiny in recent years. The globalization of markets in particular has greatly constrained the reach and effectiveness of state action, and the regulation especially of transnational companies in human rights matters has become increasingly difficult. These developments have raised doubts about the effectiveness of the state as the sole protector of people’s most basic rights. As a result, the call for extending human rights responsibility to non-state actors in general and into the private sphere in particular has become louder (e.g., Alston, 2005; Clapham, 1993, 2006).

In light of these profound global transformations we are witnessing today, human rights expert David Weissbrodt (2005) calls the persistence of the state centrism that still informs much of conventional human rights thinking “remarkable.” Granted that there has been a shift in attention to individual responsibility in matters of war crimes, genocides, and crimes against humanity in general, as Weissbrodt points out, but “there is one category of very powerful non-state actors that has not received sufficient attention,” and those are “transnational corporations and, indeed, all businesses” (pp. 282-283). It is in this context that

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the human rights principles of the UN Global Compact must be interpreted and in which they aim at filling a crucial void. Before having a closer look at these principles, however, it is worth adding a few brief remarks on the nature of human rights in general.

Why Human Rights?

In 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights in the hopes of preventing a repetition of the horrors of the Holocaust and World War II. Consisting of 30 articles, the Universal Declaration spells out the most fundamental rights to be enjoyed by all human beings irrespective of their nationality, race and color, gender, or sexual orientation and establishes them as a foundational part of international law. Since its inception, the Universal Declaration has been complemented by the two Covenants on social, economic, and cultural rights and on civil and political rights, respectively. Together, these documents are known as the International Bill of Human Rights.

While such documents define the legal or political dimension of human rights, they are not, in essence, constitutive for human rights as such. The existence and validity of human rights is independent of their legal or political codification; their foundation is a distinctly moral one. In fact, only the moral foundation of human rights can lend such political or legal interpretations and manifestations justification in the first place. Thus, human rights are, in essence, to be understood as prepolitical and prelegal, that is, as moral rights. They are, in Amartya Sen's (2004) words, "quintessentially ethical articulations, and they are not, in particular, putative legal claims" (p. 321).

Human rights are those rights that we are said to have simply by virtue of being human. Thus, they apply to all human beings in equal fashion. They are based on and protect the inherent and distinct human dignity of all human beings, which undeniably derives from their status as moral persons, that is, as persons endowed with the capacity to respect themselves and their surroundings. It is this capacity that defines human beings as autonomous subjects, and it is the autonomy of human beings that human rights aim at protecting. Human rights, in other words, protect our most fundamental freedoms, that is, the freedoms necessary to live a truly human and thus dignified life. The moral imperative deriving from human rights, as a result, is of the most fundamental kind; it trumps all other moral considerations, which are not themselves based on human rights. In particular, and perhaps especially relevant when discussing human rights in the business context, this includes considerations based on mere utility.

In essence, there is nothing we must do or be other than being human in order to deserve and insist on our human rights, and there is nothing that we or anyone else can do to justifiably lose them. This is not to say that human rights cannot be infringed on, sometimes justifiably, but this does not negate the *existence* of those rights as such; if anything, it presupposes it. Human rights, in sum, are universal (they apply to all human beings); equal (they apply to all human beings equally); and inalienable (they cannot be revoked from or given up by any human being) rights. As such, they represent the normative floor, that is, the moral minimum in regard to the decent treatment of human beings anywhere and irrespective of legal or cultural contexts. This alone makes them a powerful platform and reference point for the formulation of cross-cultural ethics and thus an almost natural starting point for our reflections on corporate responsibility in an increasingly global marketplace.

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Principle 1 : Direct Human Rights Responsibilities for Corporations

According to the UN Global Compact’s first principle, “businesses should support and respect the protection of internationally proclaimed human rights.” While this formulation does not challenge governments or states as the primary responsibility bearers for human rights, it does assume a direct, rather than merely an indirect, obligation for business to “respect” or “not infringe”¹ on human rights alongside governments. As such, Principle 1 stands in direct contrast to the state-centrism that characterizes conventional human rights thinking as outlined above. By assigning human rights responsibility directly to transnational institutions such as multinational corporations, it aims at filling the gap or incongruence between the nonterritorial nature of human rights and their violation on the one hand and the territorial limitation of governmental human rights protection on the other. Hence, corporations signing up to the Global Compact pledge to respect human rights on a voluntary basis even if or precisely when domestic laws fail to hold them accountable for it.

Despite the dominant view that only governments can have international legal personalities and be subject to international legislation, there is a good case to be made that the foundations of such corporate human rights responsibilities can, in fact, be found in international human rights law as well. For example, the Universal Declaration of Human Rights, even though principally focusing on nation-states, does not per se exclude other institutions as addressees, but explicitly states in its

¹<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html>

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preamble that it applies to “every individual and every organ of society” (Weissbrodt, 2005, p. 283; Pegg, 2003, p. 16). Furthermore, at least in regard to a most basic responsibility to respect human rights, articles 29 and 30 of the Universal Declaration state that not only states, but *any person or group* must resist performing any action that might pose a threat to human rights (Frey, 1997, p. 163). Similarly, articles 5 of both Covenants state that

Nothing in the present Covenant may be interpreted as implying for *any State, group or person* [italics added] any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

As such, the principal and conceptual basis for extending the scope of international human rights legislation into the private sphere and thus into the corporate realm, it seems, would be given.

However, one does not need to and perhaps should not rely primarily on international legislation to justify a corporate responsibility to respect human rights as stipulated in the Global Compact’s first principle. As elaborated in-depth above, the imperative deriving from human rights is first and foremost a moral one. In other words, human rights responsibilities of corporations are primarily moral responsibilities; corporations have them irrespective of what the law says. In fact, only a complete disregard of the moral status and foundation of human rights can lead one to conclude that governments should be the only parties directly obligated by human rights. If we hold that human rights represent inherent and equal moral entitlements of all human beings irrespective of their heritage and background, we cannot deny that they logically obligate not just governments, but everyone. Thus, taking the moral nature of human rights seriously means to engage in a much broader dialogue on potential duties and duty-bearers at the outset, rather than limiting them to governments, whose capabilities to cope with human rights problems on their own might already be severely compromised. By stipulating direct human rights responsibility for corporations, **Principle 1** of the UN Global Compact provides the institutional foundation that is necessary for doing so.

Principle 2: Corporate Complicity in Human Rights Abuses

While direct and often overt and blatant human rights abuse by corporations occurs frequently, an even more pervasive and perhaps a more challenging problem to deal with involve indirect human rights violations. Indirect human rights violations

are violations that are not committed by the corporation itself, but to which it has contributed in some significant way nevertheless.² Because of the special nature of such cases of corporate complicity, the UN Global Compact addresses them in a separate human rights principle, i.e., in Principle 2.

In general terms, corporate complicity can be defined as “aiding and abetting” a violation of human rights committed by a third party (e.g., Clapham & Jerbi, 2001, p. 340; Kobrin, 2009, p. 351; Ramasastry, 2002, p. 95). Three specifications are of particular importance when deciding whether or not a corporation meets the condition of aiding and abetting in the context of human rights violations:

- First, it is unimportant whether or not the corporation actually wanted or intended to contribute to a wrongdoing; no malicious intent is needed for a corporation to become complicit in human rights violations. In fact, one of the challenges of dealing with such cases of complicity is precisely that they do not readily fit in our conventional paradigm of individual, intentional wrongdoing (Kutz, 2000, p. 1). They are rarely based on a corporation’s deliberate assault on the rights of people, but instead often derive from a corporation’s regular business conduct, which would be un concerning outside of the given context.
- Second, while malicious intent is not a requirement for complicity, what is needed is knowledge. In other words, it is necessary that the corporation knows or should know, or to be precise, could reasonably be expected to know that its actions may, in one way or the other, contribute to the violation of human rights. Only a corporation that knowingly contributes to the violation of human rights can justifiably be accused of complicity (Clapham & Jerbi, 2001, p. 342).
- Third, for a corporation to become complicit in a human rights violation, its contribution needs to have a substantial effect on it. However, it does not need to be indispensable. Substantiality must be interpreted widely; it does not only include individual actions of great magnitude and scope, but also ongoing supporting activities with small individual impacts over a significant time period (Ramasastry, 2002, p. 150). Hence, even corporations that merely

Note the different use of the terms *direct* and *indirect* here: while in the previous section I referred to direct or indirect human rights obligations, I am now speaking of direct and indirect **violations** of human rights. Having direct human rights obligations means that corporations are held directly responsible for their human rights conduct. On the other hand, a direct human rights violation is one that occurs as a direct result of the corporation’s conduct, i.e., corporations can be held directly responsible for both direct (Principle 1) and indirect (Principle 2) human rights violations.

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facilitate human rights violations rather than directly contribute to them can
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Commonly, the literature distinguishes between three types of complicity that
 are based on the kind of contribution the company is making toward the human
 rights violation: direct complicity, beneficial complicity, and silent complicity (e.g.,
 Clapham & Jerbi, 2001, pp. 342—350). These three categories of complicity are the
 basis also for the second principle of the UN Global Compact.

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Direct complicity occurs if a corporation directly and actively contributes to or
 assists in the violation of human rights committed by a third party. It does not
 require involvement in a sense that the corporation is actually carrying out a part
 of the rights violation, but it presupposes a direct, tangible contribution to it. A
 corporation that knowingly makes available its facilities or offers equipment to
 authorities for the interrogation and torture of protesters, unionists, or other
 groups of people, for example, can be accused of direct complicity. In the year
 1997, police forces in India used helicopters provided by Enron Corporation to
 survey and violently suppress demonstrations and protests by activists (Human
 Rights Watch, 1999). Also, Yahoo’s history of handing over confidential informa-
 tion about user accounts of Chinese dissidents to the Chinese government can be
 interpreted as a case of direct complicity. In some instances, even the mere payment
 of taxes in oppressive regimes can be problematic, since it can be seen as a contri-
 bution to the financing of structures that bolster the regime and perpetuate system-
 atic violations of human rights (e.g., Howen, 2005, p. 14).

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In contrast to direct complicity, beneficial complicity does not require an active
 contribution on the part of the company, but “merely” that it benefits from the
 human rights violations committed by a third party. Thus, a corporation does not
 even have to provide equipment for a violent crackdown of demonstrations to run
 the risk of being accused of complicity; it may be enough for the corporation to
 derive a substantial benefit from it over an extended period of time. For example,
 the suppression of protests that are targeting oil companies such as Shell or BP for
 the environmental destruction they are causing may benefit the companies insofar
 as it protects them from disruptions in their production processes. If the companies
 accept such benefits over an extended period of time, they may rightfully be
 accused of beneficial complicity. Note that the distinction between a legal and a
 moral perspective on human rights is of particular importance in such cases; while

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Note that, from a deontological point of view, any knowing contribution to human rights violations
 by corporations would per se have to be considered ethically problematic; substantiality would then
 not be needed as a necessary condition.

it seems difficult to make a legal case for beneficial complicity in the absence of an actual contribution to the human rights violation by the corporation, it certainly does provide a sufficient basis to attach moral blame.

There is growing agreement that even without benefit the mere silence or inactivity of a corporation in the face of human rights abuses can denote a form of complicity. A bystander who has the ability to act but chooses to remain silent when the rights of people are trampled underfoot risks being perceived as condoning the human rights violation and as lending its moral support to the perpetrator (Wettstein, 2010). Its silence, in other words, may have a legitimizing, encouraging, or emboldening effect on the party that violates human rights. The notion of silent complicity, as Clapham and Jerbi (2001) comment, “reflects the growing acceptance within companies that there is something culpable about failing to exercise influence in such circumstances” (p. 348). And as Margaret Jungk (1999) from the Danish Center for Human Rights concludes: “even where a company’s operations do not directly impact upon human rights issues, the company may nonetheless be called upon to speak out or act when an oppressive government violates its citizens’ rights” (p. 171).

In a recent article, Brenkert (2009) added a fourth category of corporate complicity, which he calls “obedient complicity” (p. 459). Obedient complicity, according to Brenkert, occurs “when a business follows laws or regulations of a government to act in ways that support its activities that intentionally and significantly violate people’s human rights.” In other words, corporate activities that may be entirely un concerning outside of the context of oppressive laws may turn into complicity if they are undertaken in compliance with laws that are designed to violate human rights (Brenkert, 2009, p. 459). The case of Google’s compliance with Chinese censorship laws is a prominent and instructive example to illustrate this. As an institution of the private sector, as Brenkert points out, Google is free to choose and decide what information to make available to its users. Google, in other words, “is not obligated to provide any particular piece of information to its users” (Brenkert, 2009, p. 459). However, if the blocking of information is carried out to comply with laws that are designed by a government to prevent people from accessing information, it must be considered a form of complicity. The reason for this is that in contrast to Google, the government that is enforcing such laws does have an obligation not to arbitrarily block and censor the information that its citizens seek to access. By complying with such laws, Google is assisting the Chinese government in the violation of the human right to free expression stipulated in article 19 of the Universal Declaration of Human Rights.

Brenkert's point is well taken; understanding such more subtle forms of complicity is of key importance for the assessment of corporate wrongdoing in today’s

global age. However, it seems that if we extend direct human rights responsibility into the corporate realm, as is done in the first principle of the UN Global Compact, then it is at least questionable whether Google really has no obligation outside of the context of oppressive laws in regard to what and how much information it makes available to its users. If human rights are to protect human beings from abuse of power in general rather than merely from the power of governments, then Google too must have a responsibility to uphold the right to free access to information quite independently from any government action or policy.

Irrespective of whether in the case of Google in China we are dealing with direct or obedient complicity or even with a direct violation of human rights, the company's announcement in 2009 that it would no longer comply with Chinese censorship laws even if it meant to withdraw from the vast Chinese market was widely commended within the human rights community because it was a rare showing of a company actually taking a stance for the protection of human rights even at a potentially substantial economic cost to itself. However, the fact that the respect and protection of human rights may not always pay for companies and that it often comes at an actual cost raises the uncomfortable question of whether the UN Global Compact really can be sufficient in ensuring the protection of human rights in the economic realm. I will briefly address this question in the concluding section of this chapter.

Business and Human Rights: What's Next?

The fundamental nature of human rights and of the moral imperative deriving from them does not sit well with a merely voluntary commitment of corporations to respect them. While nearly 9,000 subscribers to the UN Global Compact certainly make for a success story without precedent in regard to such voluntary codes and standards, it cannot be denied that they still represent only a marginal share of businesses operating worldwide. Granted that the Global Compact includes many of the largest and most visible companies operating in global markets today, a vast number of less exposed companies are still flying entirely under the public radar when it comes to their human rights conduct. This raises two central questions in regard to the effectiveness of voluntary human rights principles: first, can the impact of voluntary standards be more than a drop in the bucket relative to the global human rights situation? Second and connected to it, can a voluntary code sufficiently level the playing field so that those companies who are serious in their commitment will not be put at a competitive disadvantage relative to the laggards in the market? It seems that the first question crucially

depends on how we answer the second one, and I am afraid that the answer to the second question is negative.

In order to truly level the playing field and to prevent irresponsible players in the field from undercutting and outperforming their more responsible peers, the establishment of a mandatory standard would be key. While Google sent an important message by putting human rights responsibilities over future profits, we can safely assume and in fact know that not all corporations would act the same way. For any corporation forgoing profits in the name of integrity there are others that will gladly jump in the void. As long as this unfortunate truth prevails, only a mandate for corporations to respect human rights can solicit the kind of commitment needed to have a profound and lasting impact on the global human rights situation.

In 1998, a working group of the Sub-Commission on the Promotion and Protection of Human Rights launched an attempt to establish such a binding and thus enforceable human rights code in the form of the “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with “Regard to Human Rights” (UN Draft Norms). In large part, the UN Draft Norms reflected and were based on existing international human rights norms such as, for example, the Universal Declaration of Human Rights or the two Covenants. In 2003, the working group submitted its draft to the Sub-Commission, which subsequently handed it on to the UN Commission on Human Rights for formal approval. However, the UN Draft Norms faced harsh opposition from prominent exponents of the business community that perceived them as a “legal error” (International Chamber of Commerce & International Organization of Employers [ICC/IOE], 2004, p. 3) and “an extreme case of privatization of human rights” (ICC/IOE, 2004, p. 2). Human rights obligations, as they argued, apply to corporations on a strictly voluntary basis since only states can directly be held responsible under international human rights law. They called the UN Draft Norms a danger to the progress achieved by the UN Global Compact and a threat to the very institution of human rights as such (ICC/IOE, 2004, p. 1). Faced with such criticism, the Commission rejected the UN Draft Norms, which meant that the project had effectively failed.⁴

Despite the ultimate failure of the UN Draft Norms, the need for a more institutionalized discourse on business and human rights became apparent during the heated discussion that accompanied their drafting process. The subsequent creation of the position of the UN secretary-general’s special representative on business and human rights (SRSG) in 2005 can be interpreted as a direct result of this insight. Harvard professor John Ruggie became the first SRSG and was tasked, among

•For more information on the UN Draft Norms see Weissbrodt (2005), Weissbrodt and Kruger (2005), and Arnold (2010, pp. 373-376).

other things, with identifying and clarifying standards for corporate human rights responsibility as well as contrasting them with the role of states as regulators and primary responsibility bearers. Special emphasis was put on researching and clarifying the concept of complicity in regard to corporate human rights abuse. It is hardly a coincidence that Professor Ruggie's mandate was very much aimed at the further specification of the broad areas of relevance identified already by the UN Global Compact.

In 2008, Ruggie published two much anticipated and widely shared reports on these questions that concluded his first tenure as SRSG (United Nations, 2008a, 2008b). The reports outline a tripartite framework consisting of a corporate responsibility to *respect* all human rights, the state duty to *protect* human rights, and the need for more effective access to *remedy* in cases of human rights abuse. Thus, according to the SRSG's framework, corporations are expected and obligated to respect all human rights in their interactions with their stakeholders, while states are obligated to protect their citizens from corporate human rights abuse. Both the state and the corporations share a responsibility to put adequate grievance mechanisms in place for the victims of human rights violations. Granted that Ruggie's framework is neither binding nor enforceable in a way that the UN Draft Norms were supposed to be, but it is based on the premise that all corporations have direct human rights responsibilities irrespective of any prior voluntary commitment. As such, it takes a crucial step beyond the UN Global Compact and makes a big contribution toward establishing direct corporate human rights obligations as a constitutive part of contemporary human rights thinking.

Nonetheless, in its current state, the framework merely establishes a platform or reference point to assign blame to corporations that fail to respect human rights, but not, however, mechanisms and instruments to enforce such a responsibility and hold them accountable for it. In order to make this possible, the establishment of a mandatory human rights code similar to the UN Draft Norms will be inevitable in the long run. The UN Global Compact will be of crucial importance not only for filling the void in the meantime, but also for the facilitation of the discussion and debates we must necessarily have to eventually get there.

Study/Discussion Questions

1. What is a human right? Generally, whose role is it to protect human rights?
2. Do you agree or disagree that there is a place in business for a discussion of human rights? Why or why not? Why should human rights matter to business?

3. What are three attributes of human rights? What does the author mean when he says they are the starting point for any corporate responsibility discussion?
4. What constitutes complicity? What are the three types a company needs to be aware of?
5. Why did one author see the need for the fourth category? What is a recent example that exemplifies this type of complicity?
6. Should mere silence be considered a form of complicity? Should a corporation use its influence to press foreign governments to improve their human rights record?
7. Does a corporation's human rights responsibility stop with a duty to respect human rights, or should corporations take proactive measures to promote and realize human rights?
8. Do you agree that only governments can be responsible for human rights? Why or why not? , *
9. What business processes might be affected by human rights considerations? What might be a process for integrating human rights considerations into a company?
10. In your opinion, what contribution can a voluntary approach like the UN Global Compact make? Do we need mandated human rights rules for corporations? If so, who should develop them, and how should they be enforced?

**For Cases Relevant to Human Rights Principles,
See Pages 149 to 234**

Killer Coke: The Campaign Against Coca-Cola
Henry W Lane, David T. A. Wesley

Google in China
Deborah Compeau, Prahar Shah

Ethics of Offshoring: Novo Nordisk and Clinical Trials in Emerging Economies
Klaus Meyer

Talisman Energy Inc.
Lawrence G. Tapp, Gail Robertson

Google in China¹

Deborah Compeau

Prahar Shah

In less than 10 years of existence, Google had truly become a global success story. The internet giant had experienced unprecedented growth, wooed highly acclaimed talent from rival Microsoft and other competitors to join the company—including the “father of the internet,” Vinton Cerf—and entered new markets across the world at a rapid pace. The company prided itself on its philosophy of “Do No Evil”—something that had served them well while operating in North America. However, in early 2006, they faced an ethical dilemma that put this philosophy to the test. According to some, Google’s decision to censor search results in China left their motto “in smithereens.”² The company faced intense international criticism and a backlash that made them question if their decision had been the right one.

The Birth of the Search Engine

Throughout the 1990s and into the new millennium, the world had seen

the creation of a new “communications superhighway” which changed the way people accessed resources and shared knowledge. Perhaps the fastest-growing and farthest-reaching creation since the telephone, the Internet and the World Wide Web had forever changed the way people communicated and delivered information, products and services without any international boundaries. By 2005, almost 14.6 per cent of the world’s population—close to one billion people—accessed it.³

During this time, as the web blossomed so did the need for a tool that enabled users to quickly and efficiently search the hundreds and thousands of isolated web-pages available online. Computer engineers and developers all over the world attempted to create a search engine that indexed these websites, and in 1990 the first tool to search the Internet, nicknamed “Archie,” was introduced by McGill University student Alan Emtage. The program downloaded directory listings of all the files located on a File Transfer Protocol (FTP) site into a

¹This case has been written on the basis of published sources only. Consequently, the interpretation and perspectives presented in this case are not necessarily those of Google Inc. or any of its employees.

²“Google move ‘black day’ for China,” <http://news.bbc.co.Uk/2/hi/technology/4647398.stm>, accessed August 2006.

³Sergey Brin and Lawrence Page, “*The Anatomy of a Large-Scale Hypertextual Web Search Engine*,” *Stanford University*. 1998, accessed August 2006.

searchable database. Shortly thereafter, Mark McCahill and a team from the University of Minnesota launched “Gopher”—the first search engine that organized and enabled access to plain text files from across the web.⁴

As it became clear that this tool could quickly become a backbone of the Internet, investors and developers began simplifying, streamlining and marketing online search engines. Competition within the industry was intense, and with minimal barriers to entry and minimal capital required to launch a successful search engine, competitive advantage was not easily sustained. Between 1990 and 1997, dozens of Internet search engines were created, including Excite, Galaxy, Yahoo, WebCrawler, Lycos, Infoseek, AltaVista, Inktomi, Overture, Askjeeves and MSN Search. They each had their own algorithm of organizing, ranking and displaying search results and serviced a multitude of users. In 1998, two students at Stanford University—as part of a research project—launched Google, using a new and unique method of inbound links to rank sites.⁵

[Google.Com](#)

Co-founders Larry Page, president of products, and Sergey Brin, president of technology, brought Google to life in September 1998. By 2006, the company

“Tbid

http://en.wikipedia.org/wiki/Search_engine, accessed August 2006.

“Vint Cerf: Google’s New Idea Man,” <http://www.wired.com/news/busmess/0,1367,68808,00.html>, accessed August 2006.

had grown to more than 5,000 employees worldwide, with a management team representing some of the most experienced technology professionals in the industry. Dr Eric Schmidt joined Google as chairman and chief executive officer in 2001 while Vinton Cerf joined in 2005 as Google’s vice-president and chief Internet evangelist.⁶ While Page, Brin and Schmidt were largely responsible for the company’s day-to-day operations and developing sustainable longer-term strategies, Cerf focused primarily on developing new ideas to launch products and find new sources of revenue apart from its search engine business. See Exhibits 1 and 2 for Google Inc.’s 2004 and 2005 financial statements.

Google’s Business Model

Google’s search engine used a pay-per-click (PPC) method to earn advertising revenue and provide companies with a vehicle to promote their products and services. According to wikipedia:

Pay-per-click is often used to kick-start website visibility when a new website or page is promoted, and is basically a bidding system for advertisers who pay a fee to the promotion vehicle (search engine or directory) whenever a surfer clicks on their advertisement. The more the customer pays, the higher the bid, and the more highly placed—prominent—the advertisement appears.

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tal Web Search

Advertisers specify the words that should trigger their ads and the maximum amount they are willing to pay per click. When a user searches Google's search engine on www.google.com, ads for relevant words are shown as "sponsored link" on the right side of the screen, and sometimes above the main search results.⁷

The technology Google used to accomplish this was called AdWords. AdWords used a combination of pricing and relevance to place ads. If an ad was clicked through frequently, it would be displayed more prominently. An ad which fell below a threshold clickthrough rate would be deemed not relevant, and thus would be removed from that particular search. The key benefit of Google's approach was its targeting of ads. Ads were served in the places where they would be of most relevance to users, which had the dual effect of minimizing user frustration with advertising and optimizing clickthrough rates for advertisers.

Google's AdSense technology was created based on the success of AdWords. Google recognized a much more vast marketing opportunity and released a system for webmasters and site owners to publish Google advertisements on their websites. Essentially, a website owner could choose to have Google ads served up on its pages using

the same process as Google used for its own sites. When users clicked through these ads, Google and the referring site shared the revenue.

Other Google Products

The AdWords promotional engine had catapulted the company's commercial worth into the multi-billion dollar league and funded development of spin-off search technology such as their desktop search. It had also led to further marketing opportunities for businesses as the search engine giant expanded into such ' areas as email and map marketing. In 2004, Google launched its first beta version of Google Desktop, a free downloadable application for locating one's personal computer files (including email, work files, web history and instant message chats) using Google-quality search. It also introduced Gmail in 2004, an email application service that received worldwide publicity during its launch. Gmail offered a powerful built-in search function, messages grouped by subject line into conversations and enough free storage to hold years' worth of messages.⁸ Using AdSense technology, Gmail was designed to deliver relevant ads adjacent to mail messages, giving recipients a way to act on this information. By early 2006, Google offered a range of products (see Exhibit 3).

⁷Ad Words, <http://en.wikipedia.org/wiki/AdWords>, accessed August 2006.

⁸<http://www.google.com/corporate/history.html>, accessed August 2006.

Google in China

On July 19, 2005, Google announced the opening of a product research and development center in China, to be led by renowned computer scientist and industry pioneer Dr. Kai-Fu Lee. Dr. Lee served as the company's first president and hoped to exploit China's thriving economy, excellent universities and multitude of talent to help Google develop new products and expand its international business operations. "The opening of a research and development (R&D) center in China will strengthen Google's efforts in delivering the best search experience to our users and partners worldwide," said Alan Eustace, vice-president of engineering at Google. "Under the leadership of Dr. Lee, with his proven track record of innovation and his passion for technology and research, the Google China R&D center will enable us to develop more innovative products and technologies for millions of users in China and around the world."⁹

One of the company's goals was to revitalize the Google website and offer a search engine catered specifically to the Chinese population. As Andrew McLaughlin, senior policy counsel for Google, explained in January of 2006:

Google users in China today struggle with a service that, to be blunt, isn't very good. [Google.com](http://www.google.com) appears to be

down around 10 per cent of the time. Even when users can reach it, the website is slow, and sometimes produces results that when clicked on, stall out the user's browser. Our Google News service is never available; Google Images is accessible only half the time. At Google we work hard to create a great experience for our users, and the level of service we've been able to provide in China is not something we're proud of. This problem could only be resolved by creating a local presence, and this week we did so, by launching our website for the People's Republic of China.¹⁰

U

[Google.cn](http://www.google.cn)

The launch of the new website and search engine, [Google.cn](http://www.google.cn), enabled the company to create a greater presence in the growing Chinese market and offered a customized region-specific tool with features (such as Chinese-language character inputs) that made the Chinese user experience much simpler. It also sparked the greatest controversy in the company's history. In order to gain the Chinese government's approval and acceptance, it agreed to self-censor and purge any search results of which the government disapproved. Otherwise, the new website risked being blocked in the same way the previous [Google.com](http://www.google.com) was blocked by the Chinese authorities. Google conceded. Type in "Falun Gong" or "Tiananmen Square" on Google.

⁹<http://news.bbc.co.uk/2/hi/technology/4647398.stm>, accessed August 2006.

¹⁰<http://googlebiog.blogspot.com/2006/01/google-in-china.html>, accessed August 2006.

com and thousands of search results will appear; however, when typed into Google, cn all the links will have disappeared. Google will have censored them completely, Google's decision did not go over well in the United States. In February 2006, company executives were called into Congressional hearings and compared to Nazi collaborators. The company's stock fell, and protesters waved placards outside the company's headquarters in Mountain View, California.

Google's Defense

Google defended its position, insisting that while the decision was a difficult one, it served the greater advantage to the greatest number of people.

We know that many people are upset about this decision, and frankly, we understand their point of view. This wasn't an easy choice, but in the end, we believe the course of action we've chosen will prove to be the right one.

Launching a Google domain that restricts information in any way isn't a step we took lightly. For several years, we've debated whether entering the Chinese market at this point in history could be consistent with our mission and values. Our executives have spent a lot of time in recent months talking with many people, ranging from those who applaud the Chinese government for its embrace of a market economy and its lifting of 400 million people out of poverty to those who disagree with many of the Chinese government's policies, but who wish the best for China and its people. We ultimately reached our decision by asking ourselves which course would most

effectively further Google's mission to organize the world's information and make it universally useful and accessible. Or, put simply, how can we provide the greatest access to information to the greatest number of people?

Filtering our search results clearly compromises our mission. Failing to offer Google search at all to a fifth of the world's population, however, does so far more severely. Whether our critics agree with our decision or not, due to the severe quality problems faced by users trying to access Google.com from within China, this is precisely the choice we believe we faced. By launching Google, cn and making a major ongoing investment in people and infrastructure within China, we intend to change that.

No, we're not going to offer some Google products, such as Gmail or Blogger, on Google.cn until we're comfortable that we can do so in a manner that respects our users' interests in the privacy of their personal communications. And yes, Chinese regulations will require us to remove some sensitive information from our search results. When we do so, we'll disclose this to users, just as we already do in those rare instances where we alter results in order to comply with local laws in France, Germany and the U.S.

Obviously, the situation in China is far different than it is in those other countries; while China has made great strides in the past decades, it remains in many ways closed. We aren't happy about what we had to do this week, and we hope that over time everyone in the world will come to enjoy full access to information. But how is that full access most likely to be achieved? We are convinced that the Internet, and its continued

Google's mission to provide information and services in a useful and accessible way. How can we provide information to the people?

suits clearly com-

Failing to offer to a fifth of the population, however, does so far from our critics agree. Not, due to the challenges faced by users in China, from within the choice we are making. Google, or ongoing investment in infrastructure within China, is the challenge that.

Google to offer some choices such as Gmail or other services until we're comfortable so in a manner that respects users' interests in the national communication regulations will be some sensitive information in search results. We will disclose this to you readily do in those cases where we alter results in accordance with local laws in the U.S.

China is far from those other countries that have made great strides in freedom: it remains in many ways where we aren't happy about this week, and we hope everyone in the world enjoys full access to the Internet. Is that full access available? We are committed, and its continued

development through the efforts of companies like Google, will effectively contribute to openness and prosperity in the world. Our continued engagement with China is the best (perhaps only) way for Google to help bring the tremendous benefits of universal information access to all our users there.

We're in this for the long haul. In the years to come, we'll be making significant and growing investments in China. Our launch of [Google.cn](http://google.cn), though filtered, is a necessary first step toward achieving a productive presence in a rapidly changing country that will be one of the world's most important and dynamic for decades to come. To some people, a hard compromise may not feel as satisfying as a withdrawal on principle, but we believe it's the best way to work toward the results we all desire.¹¹

Dr. Lee, a Chinese citizen, also defended Google's decision to censor the search results for [Google.cn](http://google.cn), stating that the Chinese students he meets and employs "do not hunger for democracy." He claims that,

People are actually quite free to talk about the subject (of democracy and human rights in China). I don't think they care that much. I think people would say: "Hey, U.S. democracy, that's a good form of government. Chinese government, good and stable, that's a good form of government. Whatever,

as long as I get to go to my favorite web site, see my friends, live happily." Certainly, the idea of personal expression, of speaking out publicly, had become vastly more popular among young Chinese as the Internet had grown and as blogging and online chat had become widespread. But I don't think of this as a political statement at all. I think it's more people finding that they can express themselves and be heard, and they love to keep doing that.¹²

Google's management team, although publicly supporting their decision, were disturbed nonetheless by the growing anti-censorship campaign targeting Google. Led by groups such as the "Students for a Free Tibet" and Amnesty International, mass public rallies and demonstrations were staged outside Google offices, more than 50,000 letters were sent to Google CEO Eric Schmidt demanding the removal of search filters, and the company received intense negative publicity in the media.¹³

The web is a great tool for sharing ideas and freedom of expression. However, efforts to try and control the Internet are growing. People are persecuted and imprisoned simply for criticizing their government, calling for democracy and greater press freedom, or exposing human rights abuses, online.

¹¹<http://googleblog.blogspot.com/2006/01/google-in-china.html>, accessed August 2006.

¹²Google - New York Times, <http://www.nytimes.com/2006/04/23/magazine/23google.html?ei=5090&cn=972002761056363f&ex=1303444800.&adxnnl=18adxnnlx=1156925160-KvHRNCAA/nAFCXMUIz/+g>, accessed August 2006.

¹³<http://politics.slashdot.org/politics/06/02/20/0238233.shtml>, accessed August 2006.

But Internet repression is not just about governments. IT companies have helped build the systems that enable surveillance and censorship to take place. Yahoo! has supplied email users' private data to the Chinese authorities, helping to facilitate cases of wrongful imprisonment. Microsoft and Google have both complied with government demands to actively censor Chinese users of their services.

Freedom of expression is a fundamental human right. It is one of the most

precious of all rights. We should fight to protect it.¹⁴

As the debate continued, Google executives realized that statements such as "We actually did an evil scale and decided that not to serve at all was worse evil"¹⁵ made by Schmidt were not resonating with the public. It wondered what the immediate and longer-term implications of their action would be, and whether they really were staying true to their motto "Don't Be Evil."

¹⁴ <http://irrepressible.info/about>, accessed August 2006.

¹⁵ http://www.rfa.org/english/news/technology/2006/02/01/china_google, accessed August 2006.

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| | December 31, | |
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| | 2004 | 2005 |
| Exhibit 2 Consolidated Balance Sheets (in thousands, except par vahit*) | | |
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 426,873 | \$3,877,174 |
| Marketable securities | 1,705,424 | 4,157,073 |
| Accounts receivable, net of allowances of \$3,962 and \$14,852 | 311,836 | 687,976 |
| Income taxes receivable | 70,509 | — |
| Deferred income taxes, net | 19,463 | 49,341 |
| Prepaid revenue share, expenses and other assets | 159,360 | 229,507 |
| Total current assets | 2,693,465 | 9,001,071 |
| Property and equipment, net | 378,916 | 961,749 |
| Goodwill | 122,818 | 194,900 |
| Intangible assets, net | 71,069 | 82,783 |
| Deferred income taxes, net, non-current | 11,590 | — |
| Prepaid revenue share, expenses and other assets, non-current | 35,493 | 31,310 |
| Total assets | \$3,313,351 | \$10,271,813 |
| Liabilities and Stockholders' Equity | | |
| Current liabilities: | | |
| Accounts payable | \$32,672 | \$115,575 |
| Accrued compensation and benefits | 82,631 | 198,788 |
| Accrued expenses and other current liabilities | 64,111 | 114,377 |
| Accrued revenue share | 122,544 | 215,771 |
| Deferred revenue | 36,508 | 73,099 |
| Income taxes payable | | 27,774 |
| Current portion of equipment leases | 1,902 | — |
| Total current liabilities | 340,368 | 745,384 |
| Deferred revenue, long-term | 7,443 | 10,468 |
| Liability for stock options exercised early long-term | 5,982 | 2,083 |
| Deferred income taxes, net | - | 35,419 |
| Other long-term liabilities | 30,502 | 59,502 |

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Source:

Exhibit! (Continued)

| December 31, 2005 | | December 31, | |
|----------------------|--|--------------|--------------|
| | | 2004 | 2005 |
| | Commitments and contingencies | | |
| | Stockholders' equity: | | |
| \$3,877,174 | Class A and Class B common stock, \$0.001 per value: | | |
| 4,157,073 | 9,000,000 shares | | |
| 687,976 | authorized at December 31, 2004 and December 31, | | |
| | 2005, 266,917, and | | |
| | 293,027 shares issued and outstanding, excluding 7,605 | | |
| | and 3,303 shares | | |
| 49,341 | subject to repurchase | 267 | 293 |
| 229,507 | Additional paid-in capital | 2,582,352 | 7,477,792 |
| 9,001,071 | Preferred stock-based compensation | (249,470) | (119,015) |
| 961,749 | Accumulated other comprehensive income | 5,436 | 4,019 |
| 194,900 | Retained earnings | 590,471 | 2,055,868 |
| 82,783 | Total stockholders' equity | 2,929,056 | 9,418,957 |
| | Total liabilities and stockholders' equity | \$3,313,351 | \$10,271,813 |
| 31,310 | | | |
| <u>\$10,271,813</u> | | | |

Source: Google Inc. Annual Report 2005.

\$115,575
 198,788
 114,377
 215,771
 73,099
 27,774

 745,384
 10,468
 2,083
 35,419
 59,502

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Exhibit 3 Selected Google Products

Alerts

- a service which provides emails of news and search results for a particular topic area

Answers

a service where users can post queries for which they are willing to pay others to do research; the user sets the price they are willing to pay

Blogs

- Google's own blog site is "blogger"
- They also provide a blog search utility

Book & catalog search

- allows users to search the full text of books and to search and browse online catalogs for mail order businesses

Images and Video

- Google's sites for searching pictures on the web and videos

Google Earth & Google Maps

- global maps and driving directions
- also includes the capability to search for various businesses etc. within a map and display the results graphically

Google Scholar

- allows users to search academic papers

Google Groups

- a site to allow users to create mailing lists and discussion groups

Google Desktop Search

- uses Google's search technology to track information on the user's PC

GMail

- Google's mail application

For a complete listing of Google products and services, see <http://www.google.ca/Intl/en/options/index.html>