

Panel on Information Technology and Broadcasting
Special meeting on 1 November 2005

Re Yahoo! Holdings (Hong Kong) Limited (“Yahoo! HK”)

1. In recent press reports it is said that Yahoo! HK had disclosed email subscriber’s information of a Chinese journalist Mr Shi Tao to the Chinese authorities resulting in the prosecution and imprisonment of Mr Shi for disclosing state secrets to foreign entities.

2. The documentary material that implicates Yahoo! HK is the Changsha Intermediate People’s Court of Hunan Province Criminal Verdict (2005) in relation to the trial of Mr Shi (the “Verdict”). The relevant paragraph which is on page 5 of the Verdict is: *“Account holder information furnished by Yahoo Holdings (Hong Kong) Ltd., which confirms that for IP address 218.76.8.201 at 11:32:17 p.m. on April 20, 2004, the corresponding user information was as follows: user telephone number: 0731-4376362, the Contemporary Business News office in Hunan, address: 2F, Building 88, Jianxiang New Village, Kaifu District, Changsha.”*

3. The Verdict on pages 2, 3 and 4 mentioned that the email account for sending the materials classified as state secrets to foreign entities is huoyan-1989@yahoo.com.cn, which is not a “.hk” email.

4. The Privacy Commissioner made enquiries with Yahoo! HK and in response, they have provided information elaborating on the press release they issued on 18 October 2005. Basically, Yahoo! HK denied any involvement in the alleged disclosure of information to the Chinese authorities.

5. The Personal Data (Privacy) Ordinance (the “Ordinance”) protects the privacy of individuals in relation to their “personal data”. “Personal data” is defined in the Ordinance as meaning any data relating directly or indirectly to a living individual and from which it is practicable for the identity of the individual to be directly or indirectly ascertained. If the information relates to or identifies only an organization or a business entity, it would not amount to “personal data” and the handling of such information is not within the ambit of the Ordinance.

6. Under section 37 of the Ordinance, a complaint may be made to the Commissioner for a possible breach of the Ordinance, but it has to be made by the data subject concerned. After receipt of a complaint, the Commissioner shall carry out an investigation unless he considers it unnecessary to do so, for example, where there is no prima facie case of any contravention.

7. Alternatively, the Commissioner may carry out an investigation under section 38(b) of the Ordinance if he has reasonable grounds to believe that an act or practice has been done by a data user relating to personal data and may be a contravention of a requirement under the Ordinance. The Commissioner may invoke this power of investigation only if there is a prima facie case of a contravention.

8. If “personal data” are involved, the requirement under the Ordinance that may be relevant to this case is data protection principle 3, which restricts the use or disclosure of personal data to its original collection purpose or a directly related purpose. That is to say, Yahoo! HK shall not use or disclose subscriber’s personal data for any purpose other than the collection purpose or a directly related purpose, unless prior consent having been obtained from the data subject concerned or where any of the exemption provisions in the Ordinance applies.

9. The email account concerned, i.e. the one referred to in paragraph 3 above, is a .cn account, indicating that it is registered with the Yahoo! China operation. The registrant organization of yahoo.com.cn is, according to checkdomain.com, YAHOO!, Inc. Yahoo! HK stated that: *“the Yahoo! Hong Kong site and the Yahoo! China site are managed and operated independently from one another.”* They understood that: *“the data disclosure was made by the Yahoo! China operation for a PRC user in China holding a .cn email account.”*

10. Apart from the Verdict, there is nothing to suggest that Yahoo! HK is involved in the disclosure of information of a “personal data” nature in relation to the .cn email account.

11. According to the Verdict, the account holder information furnished by Yahoo! HK is that of the Contemporary Business News office in Hunan, which is not “personal data” as defined in the Ordinance. That being the case, the Ordinance would not be engaged.

12. Right now, the Commissioner has not found any other evidence which is potent enough to trigger off section 38(b) of the Ordinance (see paragraph 7 above). However as this matter is of considerable public concern, I hereby make an appeal for information which shows or tends to show that a breach of the provisions of the Personal Data (Privacy) Ordinance has been committed. In the meantime the PCO will make such other enquiries as may be deemed appropriate. With additional information, the Commissioner will then be able to assess the situation and decide on what further action should be taken.