

# YAHOO!

1934 Act/Rule 14a-8

February 7, 2007

**VIA COURIER**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, NE  
Washington, D.C. 20549

Re: Intention to Omit Stockholder Proposal  
Submitted by Jing Zhao and Andrew Zhao

Ladies and Gentlemen:

Yahoo! Inc., a Delaware corporation ("Yahoo!" or the "Company"), hereby requests confirmation that the staff (the "Staff") of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission") will not recommend any enforcement action if, in reliance on certain provisions of Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company omits the enclosed stockholder proposal (the "Proposal") and supporting statement (the "Supporting Statement") submitted by Jing Zhao and Andrew Zhao (collectively, the "Proponents") from the Company's proxy materials for its 2007 Annual Meeting of Stockholders.

Pursuant to Rule 14a-8(j)(2), we have enclosed six (6) copies of this letter and the related exhibits. A copy of this letter, together with the related exhibits, is also being delivered to the Proponents informing them of the Company's intention to omit the Proposal and Supporting Statement from its proxy materials.

**The Proposal**

On December 13, 2006, Yahoo! received a letter dated December 7, 2006 from Ms. Ann Lau of the Visual Artists Guild (the "December 7 Guild Letter"), on behalf of the Proponents, containing the following proposal for inclusion in the Company's 2007 proxy statement:

"Be it resolved by the stockholders to request the board of directors to implement the above "Global Internet" policy as follows:

For Collective Action, Yahoo! management shall produce reports to the stockholders in June and December of each year as to what Collective Action has been taken, on a country by country basis, to promote the principles of freedom of speech within the United States and in all other



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countries in which Yahoo! operates, especially those in which content is treated more restrictively than the United States, such as China.

For Compliance Practices Yahoo! management shall notify each Yahoo! e-mail user as to what individual data about the user is available to any government agency and how Yahoo! provides such individual data; with such notice to appear on the user's Yahoo! e-mail webpage.

For Information Restrictions, Yahoo! management, in countries which restrict search results, shall notify each user of the search engine of all such imposed restrictions, with such notice to appear at the top of all search results pages.

For Government Engagement, Yahoo! management shall produce reports to the stockholders in June and December to describe any changes, country by country, which have been made in Yahoo! internet services regarding search content restrictions and surveillance of users by government agencies, including any specific procedural protections adopted."

The Company also received a letter dated December 10, 2006 (the "December 10 Letter") from the Proponents on December 14, 2006, transmitting the identical Proposal. In each instance, the Proposal was accompanied by a Supporting Statement which, along with the text of the Proposal, is attached hereto as Exhibit A.

As discussed more fully below, the Company believes that it may omit the Proposal and Supporting Statement from its 2007 proxy materials for the following reasons:

1. The Proponents have failed to submit adequate documentation to confirm their eligibility to submit the Proposal as required under Rule 14a-8(b), and therefore the Proposal may be omitted pursuant to Rule 14a-8(f);
2. The Proposal deals with a matter relating to the Company's ordinary business operations, and therefore may be omitted pursuant to Rule 14a-8(i)(7);
3. Portions of the Proposal have already been substantially implemented by the Company, and therefore may be omitted pursuant to Rule 14a-8(i)(10);
4. The Company lacks the power or authority to implement the Proposal, and to that extent, may omit the Proposal and Supporting Statement pursuant to Rule 14a-8(i)(6);

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5. The Proposal is substantially duplicative of another proposal that may be included in the Company's proxy materials for the same meeting, and therefore may be omitted pursuant to Rule 14a-8(i)(11); and
6. The Supporting Statement contains materially false and misleading statements in violation of Rule 14a-9, and such statements may be omitted pursuant to Rule 14a-8(i)(3).

### Analysis

1. **The Proposal may be excluded pursuant to Rule 14a-8(f) because the Proponents have failed to establish their eligibility to submit the Proposal as required under Rule 14a-8(b).**

To be eligible to submit a proposal for inclusion in a company's proxy statement under Rule 14a-8(b)(1), a proponent "must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the proponent] submit[s] the proposal." If the proponent is not the registered holder of the securities and has not filed a Schedule 13D, Schedule 13G or reports under Section 16 of the Exchange Act, the proponent must prove eligibility to the company under Rule 14a-8(b)(2)(i) by submitting to the Company a written statement from the "record" holder of the securities verifying that, at the time the proposal was submitted, the proponent continuously held the securities for at least one year. The proponent must also include a written statement that the proponent intends to continue to hold the securities through the date of the shareholders meeting.

Enclosed with the December 7 Guild Letter (which was first received by the Company on December 13) were copies of trade confirmations from TD Waterhouse Investor Services, Inc., indicating that Andrew Zhao had acquired 45 shares of the Company's common stock on February 27, 2004, and that Jing Zhao had acquired 100 shares of the Company's common stock on July 13, 2004. The December 7 Guild Letter, together with the enclosed trade confirmations, are attached to this letter as Exhibit B. The December 7 Guild Letter did not include any statement from the record holder or any other information or materials to verify that either of the Proponents satisfied the one-year continuous ownership requirement as of the date on which the Proposal was submitted. Moreover, the December 7 Guild Letter did not include a statement of the Proponents' intention to continue to hold the securities through the date of the stockholders meeting.

The December 10 Letter from the Proponents enclosed the same trade confirmations as were included with the December 7 Guild Letter, together with what appear to be printouts from an Internet website of TD Ameritrade account statements. Each of the account statements shows holdings of the Company's stock as of December 4, 2006 -- 3 days prior to the date of the December 7 Guild Letter, and 6 days prior to the date of the Proponents December 10 Letter.

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Neither of the printouts identifies the account holder, although each printout contained unidentified handwritten annotations indicating the name and address of each of the Proponents. A copy of the Proponents' December 10 Letter, together with all enclosures, is attached to this letter as Exhibit C. As with the December 7 Guild Letter, the Proponents' December 10 Letter did not include a statement of the Proponents' intention to continue to hold the securities through the date of the stockholders' meeting.

The Company determined that the materials enclosed with the December 7 Guild Letter and the Proponents' December 10 Letter did not satisfy the requirements under Rule 14a-8 to verify the Proponents' eligibility to submit the Proposal for inclusion in the Company's proxy materials. Accordingly, on December 21, 2006, and within the 14-day period specified in Rule 14a-8(f)(1), the Company sent a letter to the Proponents (with a copy to the Guild) to notify them of the deficiencies and to request that the Proponents cure the deficiencies within 14 days of their receipt of the Company's letter. The Company's December 21 letter, a copy of which is attached to this letter as Exhibit D, specifically identified the two deficiencies, included the actual text of the relevant requirements in Rule 14a-8(b)(2)(i) with which the Proponents needed to comply, and set forth the deadline by which the Proponents must send their response.

The Proponents responded by fax to the Company on December 27, 2006.<sup>1</sup> The Proponents included in their December 27 communication a statement to confirm their intention to hold their securities through the date of the 2007 Annual Meeting. The December 27 fax also included the following materials:

- Copies of e-mail exchanges between each of the Proponents and a client support representative at TD Ameritrade by the name of "Jamie M." The client support representative, in response to a request from each Proponent to "write me a letter to confirm that I own . . . shares of Yahoo!" since a date specified by the individual Proponent, responded with confirmation of the initial acquisition date of the shares based on the Proponent's monthly statements. Neither of the e-mail exchanges addressed the issue of *continuous* ownership since such acquisition date through the date of submission of the Proposal, nor did they provide any additional information beyond that which could be determined from the trade confirmations that the Proponents included with their original submission dated December 10.
- Copies of excerpted pages from TD Ameritrade account statements for each of the Proponents, showing (among other things) holdings of Yahoo! common stock as of the period ending September 29, 2006 -- almost 3 months prior to the date on which the Proponents submitted the Proposal to the Company.

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<sup>1</sup> While the Proponents appear to have transmitted their response by fax on December 27, the Company was closed during that entire week for the Christmas and New Year's holidays. Therefore, Company personnel did not see the Proponents' fax until they returned on January 2, 2007.

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- Copies of what appear to be printouts from a TD Ameritrade website, showing a list of trade confirmations from February 24 and July 8, 2004, respectively, through December 25, 2006. Each of these printouts contains an account number that is slightly different from the number on the accompanying account statements (e.g., "Account No. 589-94029-1-0 vs. Account 58994029), as well as unidentified handwritten marks to highlight the references to transactions in the Company's stock. Additionally, the printouts do not identify the Proponents by name, nor do they confirm that the list of transactions is complete and accurate, and that there have been no other transactions by either of the Proponents involving shares of the Company's common stock.

A copy of the Proponents' December 27 communication, including the enclosed materials, is attached to this letter as Exhibit E.

On January 5, 2007, Mr. Jing Zhao left a voice mail message, inquiring as to whether the Company received the Proponents' December 27 fax. The Company replied by fax on the same day to confirm the Company's receipt of the Proponents' December 27 communication. A copy of the Company's letter to Mr. Jing Zhao is attached to this letter as Exhibit F.

The Company believes that under the Commission's rules and existing Staff interpretations, the materials submitted by the Proponents are insufficient to establish that they *continuously* owned the requisite number of shares of Company stock for at least one year as of the date on which they submitted the Proposal to the Company. The Proponents have submitted a myriad of account statements, trade confirmations, informal e-mail messages, webpage printouts and other selected account information, presumably with the expectation that the Company, by making certain assumptions and employing deductive reasoning, can "connect the dots" to determine that the Proponents satisfy the eligibility requirements. However, in Staff Legal Bulletin No. 14 (July 13, 2001), the Staff expressly addressed this situation, and stated that such materials are insufficient to establish eligibility under Rule 14a-8. In pertinent part, the Staff posed and answered the following question in Section C.1c.(2):

- Q: Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?
- A: No. A shareholder must submit *an affirmative written statement* from the record holder of his or her securities that *specifically* verifies that the shareholder owned the securities *continuously* for a period of one year *as of the time of submitting the proposal*.

*(Emphasis added.)*

The trade confirmations, e-mail messages with the client support representative at TD Ameritrade and other account data submitted by the Proponents speak only to their initial

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acquisition of shares of the Company's common stock or to their holdings as of a specified date – they in no way constitute an *affirmative* written statement by the record holder that *specifically verifies continuous* ownership of the shares for the one-year period preceding the date on which the Proponents submitted the Proposal. Instead, the Company believes that these materials are similar to those considered by the Staff in *XM Satellite Radio Holdings, Inc.* (March 28, 2006), in which the Staff concurred in the view that trade confirmations and other statements from an online broker are insufficient to demonstrate satisfaction of the minimum continuous ownership requirement. *See also General Motors Corporation* (March 24, 2006) (account statement from TD Ameritrade insufficient to prove continuous ownership). Moreover, even if the account statements and other data were otherwise determined to be sufficient to establish the requisite continuous ownership, none of the materials supplied by the Proponents present information as of a date that corresponds to the date on which the Proponents submitted the Proposal, regardless of whether one uses December 7 (the date of the Guild's Letter) or December 10 (the date of the Proponent's initial letter) as the date of submission. In this regard, we believe that the current situation is analogous to the situation reviewed by the Staff in *Milacron, Inc.* (December 21, 2004). In *Milacron*, the proponent attempted to verify compliance with the continuous ownership requirement for a proposal submitted on September 15, 2004, by submitting a letter from a broker stating that the proponent owned shares of the company's stock as of the market close on July 1, 2004, and that the shares had been purchased from 1989 through 2002. The Staff nevertheless concurred with the company's view that it could exclude the proposal by reason of the fact that the proponent failed to adequately verify his eligibility under Rule 14a-8(b).

The Company notified the Proponents of the deficiencies as required under Rule 14a-8(f)(1), but the Proponents have failed adequately to correct the deficiencies within the prescribed time period and to verify that they satisfy the continuous ownership requirement as set forth in Rule 14a-8(b) and relevant Staff interpretations. Accordingly, the Company believes that it may properly exclude the Proposal and Supporting Statement in reliance on Rules 14a-8(b) and 14a-8(f).

**2. The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations.**

A company may exclude a stockholder proposal from the company's proxy materials under Rule 14a-8(i)(7) if the proposal deals with a matter relating to the company's ordinary business operations. In Release No. 34-40018 (May 21, 1998) (which we will refer to in this letter as the "1998 Release"), the Staff indicated that the underlying policy of the "ordinary business" exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." The Staff further stated in the 1998 Release that this general policy rests on two central considerations. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration

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relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

The Company believes that the Proposal is precisely the type of matter that the "ordinary business" exception in Rule 14a-8(i)(7) is intended to address. The Proposal seeks to institute practices and procedures that, if implemented, would dictate the basis and manner in which the Company provides or makes available services to its users. For example, the Proposal requests that the Company (i) notify users that it has imposed restrictions on search results in various countries, and post this notice at the top of search results pages, and (ii) notify e-mail users of what data is collected and how it is shared, with such notice to appear on the user's e-mail webpage. However, matters such as the content and appearance of the Company's web pages and the Company's communications with its users are routinely handled by management as part of the Company's day-to-day business operations. Furthermore, in seeking reports<sup>2</sup> on the action taken by Yahoo! in promoting the principles of free speech, and the changes in Yahoo!'s Internet services regarding search content restrictions and government surveillance, the Proposal seeks to interfere with the Company's response to applicable governmental regulations. Not only are these matters fundamental to management's ability to operate the Company on a daily basis, but they are also complex matters which, in order to make an informed judgment, require a detailed understanding of, among other things, the Company's business, the services offered by the Company and the manner in which those services are provided, available technology and the various regulatory environments in which Yahoo! operates. It would simply be impractical, and interfere with the conduct of the Company's business, to have stockholders, as a group, micro-managing such complex aspects of the Company's business, or seeking solutions to these matters in the context of an annual stockholders meeting.

With the understanding that the specific instructions in the Proposal are intended to focus the Company's attention on freedom of expression and privacy, the Company's position in this regard is further supported by the fact that the Company's management already addresses the matters referenced in the Proposal. Over the last year, and in any case prior to receiving the Proposal, the Company has established a multi-disciplinary and cross-functional team of Yahoo! employees worldwide to coordinate and support the Company's efforts to address privacy and free expression issues on a global basis. The team consists of Yahoo! employees from a variety of disciplines and departments, including legal, public and governmental relations, privacy, public policy, community affairs, global law enforcement and compliance, security, emerging markets and international operations. Members of the team consult regularly with Company officers and other personnel and respond to internal and external requests for information and

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<sup>2</sup> The Staff has previously stated that, in determining whether a proposal that requests preparation and dissemination of a special report to shareholders on specific aspects of a company's business is excludable under Rule [14a-8(i)(7)], the Staff "will consider whether the subject matter of the special report involves a matter of ordinary business." See Exchange Act Release No. 34-20091 (Aug. 16, 1983) (referencing the predecessor to Rule 14a-8(i)(7)).

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feedback on foreign laws and Company practices and policies. Members of the team also frequently engage and consult with outside experts, such as the U.S. Department of State and various academic institutions (such as The Berkman Center on Internet & Society at Harvard Law School), and collaborate with leaders and representatives of other technology and communications companies to seek solutions to the free expression and privacy challenges that these companies face when conducting business internationally. In short, this multi-disciplinary team of executives and managers is responsible for guiding the Company, when faced with laws, regulations and policies that implicate human rights issues, in making decisions as to how best to conduct business in compliance with current regulations, and how best to act or respond to effect change in the regulatory framework to promote the Company's business objectives.<sup>3</sup>

In several analogous circumstances, the Staff has permitted companies to exclude on the basis of Rule 14-8(i)(7) proposals aimed at comparable management functions. *See, e.g., Bank of America Corporation* (March 7, 2005) (company permitted to exclude a proposal requesting a report on the company's "policies and procedures for ensuring that all personal and private information pertaining to all Bank of America customers will remain confidential in all business operations 'outsourced' to offshore locations"); *Carnival Corporation and Carnival plc* (January 6, 2006) (company allowed to exclude proposal requiring that company terminate contracts to display certain broadcast stations and certain media publications, because it related to the "nature, content and presentation of programming"); *Time Warner Inc.* (February 6, 2004) (company permitted to exclude proposal creating a committee to review the link between tobacco use by teens with tobacco use in youth-rated movies, because it related to ordinary business operations involving the "nature, presentation and content of programming and film production"); *Bank of America Corporation* (February 21, 2006) (company permitted to exclude a proposal that pertained to "customer relations"). *See also Sprint Corporation* (February 6, 2002) (company permitted to exclude a proposal requesting that the board prepare a report on the feasibility of using recycled paper for billing statements, noting that the proposal related the company's ordinary business of "decisions concerning the paper stock and method of billing."). The Staff has also classified as "ordinary business" the manner in which a company complies with or responds to governmental regulation. *See, e.g., Monsanto Company* (November 3, 2005) (company permitted to exclude a proposal establishing an ethics oversight committee because it related to the "general conduct of a legal compliance program"); *Microsoft Corporation*

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<sup>3</sup> The Company's proactive engagement on these issues, and its efforts to solicit input from others and inform the public of its progress, are further confirmed in a number of recent announcements and public statements by or involving the Company. *See, e.g.,* Company press release issued on February 13, 2006 entitled "*Yahoo! Our Beliefs as a Global Internet Company.*" *See also* press release issued on January 18, 2007 by Business for Social Responsibility (announcing an initiative by a group of companies (including Yahoo!), academics, investors and technology leaders and human rights organizations to seek solutions to the free expression and privacy challenges faced by technology and communications companies doing business internationally); *On Being Global*, Yahoo! Corporate Blog, January 18, 2007 (<http://yodel.yahoo.com/2007/01/18/on-being-global/>); and *The GIFT of giving*, Yahoo! Corporate Blog, February 2, 2007 (<http://yodel.yahoo.com/2007/02/02/the-gift-of-giving/>). For the Staff's convenience, we are enclosing with this letter a copy of each of the foregoing materials (attached as Exhibit G, Exhibit H, Exhibit I, and Exhibit J, respectively).



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(September 29, 2006) (company permitted to exclude a proposal requesting a report on the company's response to regulation of the Internet because it related to the ordinary business operation of "evaluating the impact of expanded government regulation of the Internet"). The Staff has also allowed companies to exclude proposals under the "ordinary business" exception to the extent that they attempt to involve the company in a legislative process relating to aspects of its business operations. See, e.g., *Verizon Communications, Inc.* (January 31, 2006); *International Business Machines Corporation* (March 2, 2000); *Pepsico, Inc.* (March 7, 1991); *Dole Food Company* (February 10, 1992); and *GTE Corporation* (February 10, 1992).

For all of the foregoing reasons, the Company believes that it may exclude the Proposal and Supporting Statement from the Company's proxy materials in reliance on Rule 14a-8(i)(7).

**3. Portions of the Proposal have already been substantially implemented, and therefore may be excluded pursuant to Rule 14a-8(i)(10).**

Rule 14a-8(i)(10) allows a company to exclude from its proxy materials a proposal that the Company has already substantially implemented. Yahoo! believes that certain elements of the Proposal have been substantially implemented. Specifically:

- In our privacy policy, Yahoo! already notifies each Yahoo! e-mail user that individual data about the user is collected, and that under certain circumstances user data may be shared with third parties (as the Proposal suggests in the second stated policy). Yahoo! has an extensive privacy policy that informs users of what data the Company collects, and clearly delineates the ways in which data may be shared with third parties. A copy of Yahoo!'s privacy policy is enclosed with this letter as Exhibit K. Links to Yahoo!'s privacy policy can be located not only on users' e-mail pages, but from virtually anywhere on the Yahoo! website. Additionally, acknowledgment of the privacy policy is a condition to user registration. Thus, Yahoo! believes it has substantially implemented the second policy and may exclude it pursuant to Rule 14a-8(i)(10).
- Yahoo! China, which is owned and operated by Alibaba.com Corporation ("Alibaba"), a company in which Yahoo! has a minority investment, notifies users regarding restrictions that may have been imposed on a particular search (as the Proposal suggests in the third stated policy). Specifically, the following notice appears on the Yahoo! China search page to inform users that results may have been modified pursuant to legal requirements (quoting in pertinent part, and translated into English):

"All the search results of Yahoo originate from relevant websites, part of which may not be shown according to the applicable laws and regulations. Please click here to view the search results not shown according to the

Regulations on the Protection of the Right of Communication through  
Information Network.”

Thus, even though the Company does not control Yahoo! China or its day-to-day business operations, as a consequence of Alibaba's decision to have Yahoo! China include this notice, Yahoo! believes that the third policy has been substantially implemented and may be excluded pursuant to Rule 14a-8(i)(10).

4. **The Company lacks the power or authority to implement the Proposal, and to that extent may omit the Proposal and Supporting Statement pursuant to Rule 14a-8(i)(6).**

Rule 14a-8(i)(6) allows a company to exclude from its proxy materials a proposal if the company lacks the power or authority to implement the proposal. Yahoo! and its affiliates currently have business operations and joint ventures in a number of foreign countries. Yahoo! also holds investments in companies located abroad, including in China, where Yahoo! owns a minority investment in Alibaba. The text of the Proposal does not distinguish between the Company and its affiliates, joint ventures, and minority investments and can be read as seeking to extend application of the specified minimum standards to all such entities. However, in the case of Alibaba, Yahoo! owns only a minority investment, and otherwise does not have day-to-day management control, and thus lacks the power or authority to implement or impose the requested standards on Alibaba or any of its business units. To the extent Alibaba has already implemented portions of the Proposal, it has done so independently.

The Staff has allowed companies to exclude proposals pursuant to Rule 14a-8(i)(6) under analogous circumstances. For example, the Staff has determined that a board of directors would lack the power to ensure that other directors would retain their independence at all times. *Allied Waste Industries, Inc.* (March 21, 2005); see also Staff Legal Bulletin No. 14C (June 28, 2005) (discussing *Allied Waste Industries, Inc.*). The Staff has also allowed exclusion of a proposal requesting adoption of a bylaw which would have applied “to successor companies” because it did “not appear to be within the board’s power to ensure that all successor companies adopt a bylaw like that requested by the proposal.” *AT&T Corp.* (March 10, 2002).

To the extent that Yahoo! lacks the power to implement the Proposal, the Company believes it may omit the Proposal and Supporting Statement pursuant to Rule 14a-8(i)(6).

5. **The Proposal may be excluded pursuant to Rule 14a-8(i)(11) because it is substantially duplicative of another previously submitted proposal.**

A company may exclude a proposal pursuant to Rule 14a-8(i)(11) if the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting.

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The Company, by letter dated February 7, 2007, has notified the Staff of the Company's intent to exclude a proposal from the Office of the Comptroller of New York City (the "NYC Comptroller Proposal") addressing the same subject matter as the instant Proposal.<sup>4</sup> For the reasons stated in that letter, the Company believes that it may omit the NYC Comptroller Proposal from its proxy materials as well. However, to the extent that the Staff disagrees with the Company's position and requires inclusion of the NYC Comptroller Proposal, Yahoo! believes that the instant Proposal may be excluded because it is substantially duplicative of the NYC Comptroller Proposal in the following respects:

- Both proposals seek to require Yahoo! to notify users of the Company's data retention policies and how information can or will be shared with governments and other third parties.
- Both proposals seek to require Yahoo! to inform users when search results or other content has been filtered or censored.
- The first and fourth policies of the current Proposal request reports on actions the Company has taken, and changes in its policies, regarding content restrictions in free speech-restricting countries, while the sixth minimum standard of the NYC Comptroller Proposal requests that the Company document, and make publicly available, all cases where the Company has complied with requests for censorship.

Therefore, to the extent the Staff disagrees with the Company's position that it may exclude the NYC Comptroller Proposal, the current Proposal is substantially duplicative of the NYC Comptroller Proposal, and therefore the Proposal and Supporting Statement may be omitted pursuant to Rule 14a-8(i)(11).

**6. The Supporting Statement contains materially false and misleading statements in violation of Rule 14a-9. Accordingly, the Company may exclude such false and misleading statements pursuant to Rule 14a-8(i)(3).**

The Company believes that it may exclude portions of the Supporting Statement from its proxy materials under Rule 14a-8(i)(3), which allows a company to exclude shareholder proposals that violate the Commission's proxy rules, including the prohibition contained in Rule 14a-9 against the use of materially false and misleading statements.

The Company believes that the Supporting Statement contains statements that are materially false and misleading in violation of Rule 14a-9. Specifically, the last paragraph in the Supporting Statement states that the "U.S.-China Economic and Security Review Commission, which has 'Freedom of Expression' as part of its mandate, has recommended U.S. companies be prohibited from disclosing information about Chinese users or authors of online content.

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<sup>4</sup> For the Staff's convenience, a copy of the NY Comptroller Proposal is included with this letter as Exhibit L.

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(www.uscc.gov)." This statement is materially misleading in that it omits to state that the USCC recommendation contains an exception that would allow companies to disclose information about Chinese users or authors of online content if the Chinese government brings a formal legal action. For the Staff's convenience, a copy of the USCC recommendation is attached to this letter as Exhibit M.


Yahoo! believes it may omit the foregoing statement under Rule 14a-8(i)(3) to the extent it is materially false and misleading in violation of Rule 14a-9.

### Conclusion

For each of the reasons discussed above, the Company believes that it may exclude the Proposal and Supporting Statement from its proxy materials for the 2007 Annual Meeting of Stockholders. If for any reason the Commission does not agree with the Company's position, or it has questions or requires additional information in support of the Company's position, we would appreciate an opportunity to confer with the Commission's Staff prior to the issuance of a formal response. Please call me at (408) 349-7131, or in my absence, Thomas J. Leary, Esq., of O'Melveny & Myers LLP at (949) 823-7118.

Please acknowledge receipt of this letter and the enclosures by date stamping an enclosed copy of this letter and returning the date-stamped copy to our messenger.

Very truly yours,



Christina Lai  
Senior Legal Director

### Enclosures

cc: Mr. Jing Zhao  
Mr. Andrew Zhao  
Ms. Ann Lau, Visual Artists Guild  
Michael J. Callahan, Senior Vice President and General Counsel, Yahoo! Inc.  
Thomas J. Leary, Esq., O'Melveny & Myers LLP