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NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ONLINE POLICY GROUP, NELSON CHU  
PAVLOSKY, and LUKE THOMAS SMITH,

Plaintiffs,

v.

DIEBOLD, INCORPORATED, and DIEBOLD  
ELECTION SYSTEMS, INCORPORATED,

Defendants.

Case Number C 03-04913 JF

ORDER AFTER CASE  
MANAGEMENT CONFERENCE

Diebold has represented, both in its submission to the Court dated November 24, 2003 (Docket No. 38) and at a specially-set case management conference on December 1, 2003, that it no longer demands that Plaintiffs or any other party cease and desist using Diebold's email archive for noncommercial critical purposes. In addition to representing that it will not sue Plaintiffs for copyright infringement, Diebold also has represented that it will retract all outstanding Digital Millennium Copyright Act safe harbor notifications to Internet Service Providers concerning the email archive and will not issue such notifications to any party in any

1 jurisdiction in the future. In light of Diebold's representations, Plaintiffs' motion for a  
2 preliminary injunction is now moot. Accordingly, proceedings on the motion will be terminated.

3 Plaintiffs continue to seek other remedies, including a declaratory judgment, damages,  
4 and attorney's fees, that are not moot. The parties have agreed to engage in mediation, either  
5 through the Court's ADR program or through a private provider, to be completed by December  
6 31, 2003. If the parties fail to resolve their differences, they may file cross-motions for summary  
7 judgment on or before January 12, 2004. Opposition briefs must be filed on or before January  
8 30, 2004. No reply briefs will be permitted. The hearing on the cross-motions for summary  
9 judgment is scheduled for February 9, 2004 at 9 a.m.

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12 IT IS SO ORDERED.<sup>1</sup>

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14 DATED: December 1, 2003

15 /s/ (electronic signature authorized)

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17 JEREMY FOGEL  
18 United States District Judge  
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28 <sup>1</sup> This Order is made in express reliance upon Diebold's representations to the Court as  
set forth herein.

1 Copies of Order have been served upon the following persons:

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