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16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

19 )  
20 Plaintiffs, )

21 v. )

22 DIEBOLD, INCORPORATED, and DIEBOLD )  
ELECTION SYSTEMS, INCORPORATED, )

23 )  
24 Defendants. )

No. C-03-04913 JF

**PLAINTIFFS' AMENDMENT TO  
APPLICATION FOR PRELIMINARY  
INJUNCTION TO CLARIFY SCOPE OF  
PROPOSED RELIEF**

Date: November 17, 2003  
Time: 9:00 a.m.  
Courtroom: 3

1 Plaintiffs hereby amend their requested proposed relief in their request for preliminary  
2 injunction to clarify that they seek publication of the *entire* Diebold e-mail archive, not just the  
3 subset of that archive filed as Exhibit “B” to the Declaration of Wendy Seltzer filed in support of  
4 this motion.

5 Plaintiffs Pavlosky and Smith published the entire e-mail archive on the web, and  
6 Swarthmore disabled access to the entire archive pursuant to Diebold’s cease-and-desist letter.  
7 Smith Second Supplemental Declaration, ¶¶3-4. Due to a miscommunication between Plaintiffs  
8 Pavlosky and Smith and their counsel, counsel believed that Exhibit “B” was the entire archive and  
9 represented that this was their belief in their filings before this court. *Id.*, ¶2. Plaintiffs’ counsel  
10 have recently learned that the Exhibit “B” is only a subset of the e-mails and that the entire archive  
11 is contained in a downloadable file known as a .tar file and as searchable files in a web-friendly  
12 HTML format, the contents of which, if printed out, would fill a bankers’ box. *Id.* ¶3-4.<sup>1</sup> The  
13 confusion apparently arose because Diebold’s cease and desist letter to Swarthmore identified only  
14 the subset of the archive contained in Exhibit “B” (Pavlosky Decl., Exh. A), but nonetheless  
15 Swarthmore required the entire e-mail archive to be removed. Plaintiffs suspect that neither  
16 Diebold nor Swarthmore was aware that Exhibit “B” was merely a subset of the archive at the time  
17 the cease-and-desist letters were sent. Plaintiffs are informed and believe that Diebold has sent  
18 cease-and-desist notices to others referencing the entire archive and not just the subset. Further,  
19 Plaintiffs believe that Diebold seeks removal of the entire archive from publication on the Internet.

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25 <sup>1</sup> Plaintiffs believe that Diebold is in possession of the entire archive since it has sent cease and  
26 desist letters seeking its removal as well as the smaller subset. Because of the size of the entire  
27 archive, the outstanding question of a protective order, and the fact that the subset provided with  
28 the Plaintiffs’ moving papers is illustrative of the content of the archive, Plaintiffs are not providing  
the entire archive to the Court at this time. Should the Court deem the entire bankers’ box of  
documents (or a CD-ROM containing them) helpful in determining the preliminary injunction  
motion, Plaintiffs certainly would be willing to provide them to the Court.

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Accordingly, since the *entire* e-mail archive was previously published and the entire e-mail archive was taken down in response to the cease and desist notice, Plaintiffs hereby clarify that they request an injunction preventing Diebold from issuing cease and desist letters concerning the entire archive or any subset thereof, whether published in the form of a .pdf file, a .tar file, an .html file or in any other form.

DATED: November 12, 2003

By \_\_\_\_\_  
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