

2 Cindy A. Cohn, Esq. (SBN 145997)
Wendy Seltzer, Esq.
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
3 San Francisco, CA 94110
Telephone: (415) 436-9333 x108
4 Facsimile: (415) 436-9993

5 Alan Korn, Esq. (SBN 167933)
LAW OFFICE OF ALAN KORN
6 1840 Woolsey Street
Berkeley, CA 94703
7 Telephone: (510) 548-7300
Facsimile: (510) 540-4821

8
9 Attorneys for Plaintiff
ONLINE POLICY GROUP

10 Jennifer Stisa Granick, Esq. (SBN 168423)
STANFORD LAW SCHOOL
11 CYBERLAW CLINIC
559 Nathan Abbott Way
12 Stanford, CA 94305-8610
Telephone: (650) 724-0014
13 Facsimile: (650) 723-4426

14 Attorneys for Plaintiffs
NELSON CHU PAVLOSKY and LUKE
15 THOMAS SMITH

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

**DECLARATION OF ASHEESH LAROIA
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

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

25 _____)
26 , Asheesh Laroia, declare under penalty of perjury that the following is true and correct:
27
28

1 I am a second year student at Johns Hopkins University, intending to major in
2 cognitive science.

3 2. Johns Hopkins provides students with webserver space and space on FESTER, a
4 web-enabled file transfer and file sharing service for members of the Hopkins community.

5 3. I posted the Diebold email archive on my website via FESTER because I was
6 concerned about electronic voting and the potential insecurities in Diebold's machines that emails
7 in the archive revealed. I had read the research of Johns Hopkins Professor Avi Rubin and others,
8 analyzing the Diebold voting machines' failure to meet minimal security standards, and was
9 disturbed that the State of Maryland was nonetheless proceeding to purchase and deploy Diebold
10 electronic voting machines. I thought that posting the email archive was a productive way to
11 contribute to this public discussion.

12 4. On November 5, 2003, I got an email from Johns Hopkins Student Technology
13 Services and found that the Diebold email archive had been removed from my FESTER web file
14 space.

15 5. In a November 7, 2003 meeting with Student Technology Services, I learned that
16 Johns Hopkins University had not received a cease-and-desist letter from Diebold but had decided
17 not to permit the posting of the email archive.

18 6. On November 25, after learning that Diebold had informed the San Jose District
19 Court of its decision not to sue for copyright infringement over the posting of the email archive, I
20 informed Johns Hopkins Student Technology Services that I intended to re-publish the email
21 archive. I then re-posted the Diebold email archive tarball.

22 7. On December 1, 2003, I received an email from Deborah Savage, forwarded from
23 Wes Blakeslee in Johns Hopkins legal department. A copy of the email is attached as Exhibit A.
24 The email indicated that despite Diebold's retraction of letters to other ISPs, the University would
25 not permit its resources to be used for "copyright violation."

26 8. I responded, citing Diebold's withdrawal letter of November 24, 2003, and
27 statements at the case management conference December 1, 2003. A copy of my response is
28 attached as Exhibit B.

9. Again, the email archive was removed from my FESTER web file space.

2 10. On December 4, I received a further email from Deborah Savage, a copy of which is
3 attached as Exhibit C. That email indicated that

4 [Johns Hopkins Provost] Dr. Knapp has responded to our publishing Diebold
5 memos on University owned resources. He states that the university cannot allow
6 its resources to be used in violation of copyright law, whether or not the holder of
the copyright (in this case Diebold) plans to prosecute. As long as the advice of our
General Counsel is that posting this material on our website would, in fact,
constitute such a violation, we cannot permit it.

7 I am not currently posting the Diebold email archive because of Johns Hopkins
8 concerns about copyright liability. I remain interested in the electronic voting debate, however. I
9 would like to republish the email archive, and intend to do so again if Johns Hopkins permits me
10 to.

11
12 I declare under penalty of perjury under the laws of the State of Maryland that the foregoing
13 is true and correct and that this declaration was executed in Baltimore, Maryland.

14
15 Date: 9 January 2004

Asheesh Laroya
ASHEESH LAROIA

16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

From Deborah.Savage@jhu.edu Tue Dec 16 18:34:18 2003
Date: Mon, 01 Dec 2003 10:39:57 -0500
From: Deborah G. Savage <Deborah.Savage@jhu.edu>
To: asheesh@jhu.edu
Subject: Fwd: Re: Fwd: Diebold memos update Confidential communication of
counsel

>Date: Wed, 26 Nov 2003 14:36:24 -0500
>From: Wesley Blakeslee <blakesleew@jhu.edu>
>Subject: Re: Fwd: Diebold memos update Confidential communication
>of counsel
>To: Deborah.Savage@jhu.edu
>Cc: Steven Knapp <steven.knapp@jhu.edu>
>X-Mailer: Novell GroupWise Internet Agent 6.0.4 Beta
>Original-recipient: rfc822;dsavage2@jhem.jhu.edu

>Deborah:

>
>First, without the necessity of legal analysis, the University is the
>owner of and has absolute control of its resources, and can make its own
>decision as to how its resources are used. There is no "right" of a
>student to use University resources. There are no First Amendment or
>other Constitutional issues involved here. I understand that the student
>has his own website and can post the materials there. What is the basis
>of the desire that these materials be posted on JHU resources?
>
>If the student can produce a writing from Diebold to JHU that Diebold will
>not object to the placing of its materials on JHU network space, AND, that
>we can so post that with the materials, from a legal standpoint the
>student could restore his materials to Fester (Subject, of course to all
>the rules in effect for so doing, including volume of files, etc.), but
>the Diebold acquiescence must be posted as well. I am not interested in
>any filing that Diebold may have made in any litigation to which JHU was
>not a party. (I have read the materials referred to, and indeed
>they refer only to the parties in that litigation, and they contain the
>continued assertion by Diebold of ownership of the materials, and
>Diebold's objection to the publication of its source code or other trade
>secrets; i.e. these documents are not in the public domain.)
>
>There are more than legal issues here. As a non-profit educational
>institution which produces copyrighted works, and which, prior to
>publication, holds and maintains substantial confidential and valuable
>information, we are aggrieved when someone takes our work without
>permission, and could suffer large losses if our confidential information
>were prematurely disclosed. Therefore, we have a general policy
>of respecting the rights of others as well. Diebold has apparently given
>up trying to contain these materials, but does that make the copyright
>violation any less, or just reduce the consequences? Should the
>University aid and abet, and participate in this "electronic civil
>disobedience" (as the sites noted in the student's email call this campaign).
>
>Please understand that I view this act far different than the work of
>Professor Rubin. If a faculty member chooses to do a scholarly analysis,

Exhibit A. Declaration of Asheesh Laroia

>no matter how detrimental (pure legal defamation aside), we would, and do,
>stand by that faculty member's right to publish. This is far different,
>it is the publishing of the raw documents belonging to Diebold. It is the
>difference between publishing a thoughtful, though scathing, article about
>the poems of Shelly and simply publishing a copy of the poems
>themselves. The first is journalism, scholarship and research, the latter
>merely copyright violation.
>
>All of this having been said, I don't formulate policy. I would like a
>writing from Diebold to JHU to satisfy my risk tolerance for unnecessary
>legal exposure. Beyond that, the other issues I raise for your
>consideration. There may be many others that you feel you must consider
>as well. From an educational standpoint maybe the administration believes
>we should be reactionary and controversial, and that the posting of
>Diebold's materials furthers a valid end. Just as there may be
>legitimate reasons for posting the poems in the above example. Those
>decisions are best left to others charged with that responsibility.
>
>I have copied Dr. Knapp who is often the final arbiter of such
>controversy, so he is aware of this request. Certainly if Dr. Knapp
>believes we should post this material, then by all means so proceed.
>
>Wes Blakeslee

EXHIBIT B

om asheesh@jhu.edu Tue Dec 16 18:36:38 2003
Date: Tue, 2 Dec 2003 16:50:39 -0500 (EST)
From: Asheesh Laroia <asheesh@jhu.edu>
To: Deborah G. Savage <Deborah.Savage@jhu.edu>
Cc: Brandon Lockett <blocket@jhuadig.admin.jhu.edu>, Avi Rubin <rubin@jhu.edu>, Gerald Masson <masson@jhu.edu>, Dennis O'Shea <doshea2@jhem.jhu.edu>, Darren Lacey <dll@jhu.edu>, Adam Stubblefield <astubble@cs.jhu.edu>, Tadayoshi Kohno <yoshi@cs.jhu.edu>, sboswell@jhem.jhu.edu, dshepard@jhunix.hcf.jhu.edu
Subject: Re: Fwd: Re: Fwd: Diebold memos update Confidential communication of counsel

"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 jurisdiction in the future."

This is from a court order dated yesterday:

http://www.eff.org/Legal/ISP_liability/OPG_v_Diebold/20031201_order.pdf

The "any other party" and "in any jurisdiction" phrases are key to addressing General Counsel's concerns.

Please forward this to general counsel (should I just CC: him myself in the future?).

Yours,

Asheesh.

--

If everything is coming your way then you're in the wrong lane

On Mon, Dec 2003, Deborah G. Savage wrote

> Asheesh - I've been in touch with the University Council. He has written
> the following. Please wait until we hear from the Provost before you post
> anything on the University site.
>
>> Brandon Lockett <blocket@jhuadig.admin.jhu.edu>, Avi Rubin <rubin@jhu.edu>
>> >Cc: Gerald Masson <masson@jhu.edu>, Dennis O'Shea <doshea2@jhem.jhu.edu>,
>> > Darren Lacey <dll@jhu.edu>, Adam Stubblefield <astubble@cs.jhu.edu>,
>> > Tadayoshi Kohno <yoshi@cs.jhu.edu>
>
> Deborah G. Savage Krieger Hall, 107A
> Student Technology Services 3400 N. Charles Street
> IT@JHU Baltimore, MD 21218
> 410.516.2924

Exhibit B. Declaration of Asheesh Laroia

- >
- > "Our first belief is that "disability" is a rational concept. It does
- > not reside within the individual. Our second belief is that electronic
- > technology can alter environments in such a manner as to allow people
- > who have various functional deficits to operate without any disability
- > what so ever." Richard Reed, CCD Newsletter, Fall 1988, v (2), EDUCOM
- > Software Initiative, 1989.
- >
- >
- >

EXHIBIT C

Date: Thu, 04 Dec 2003 09:10:03 -0500
From: Deborah G. Savage <Deborah.Savage@jhu.edu>
To: Asheesh Laroia <asheesh@jhu.edu>
Cc: Wesley Blakeslee <blakesleew@jhu.edu>,
Brandon Lockett <blocket@jhuadig.admin.jhu.edu>, sboswell1@jhem.jhu.edu,
dshepard@jhunix.hcf.jhu.edu
Subject: Provost Knapp's response

Dear Asheesh,

Dr. Knapp has responded to our publishing Diebold memos on University owned resources. He states that the university cannot allow its resources to be used in violation of copyright law, whether or not the holder of the copyright (in this case Diebold) plans to prosecute. As long as the advice of our General Counsel is that posting this material on our website would, in fact, constitute such a violation, we cannot permit it.

Your access to FESTER, if it has not been restored, will be made available, immediately.

Sincerely,

Deborah Savage