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6 DIEBOLD, INCORPORATED, AND DIEBOLD
ELECTION SYSTEMS, INC.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA / SAN JOSE
10

11 **ONLINE POLICY GROUP, NELSON
CHU PAVLOSKY, and LUKE
12 THOMAS SMITH,**

13 **Plaintiffs,**

14 **v.**

15 **DIEBOLD, INCORPORATED, and
16 DIEBOLD ELECTION SYSTEMS,
INC.,**

17 **Defendants.**
18
19
20

Case No. 03-4913JF

**DECLARATION OF ADAM SAND IN
SUPPORT OF DIEBOLD'S MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: February 9, 2004
Time: 9:00 a.m.
Courtroom: 3

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I, ADAM R. SAND, declare as follows:

1. I am an active member of the Bar of this Court and an associate of JONES DAY LLP, counsel for defendants in this action.

2. Exhibit A is a true and complete copy of several archived emails included in the copyrighted material at issue in this case.

3. Exhibit B is a true and correct copy of the article entitled Swarthmore Administration Taking Steps To Support Student Action in Diebold Matter, dated 10/31/03, posted at <http://www.swarthmore.edu/news/releases/03/diebold.html>, as it appeared November 12, 2003.

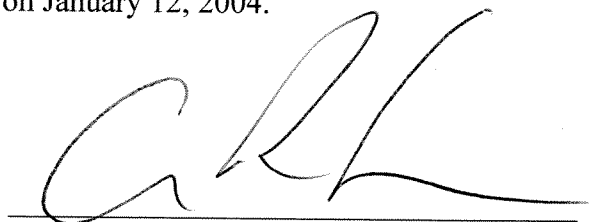
4. Exhibit C is a true and correct copy of the counter-notification sent from the student plaintiffs and dated November 7, 2003.

5. Exhibit D is a true and correct copy of the withdrawal letter sent by Diebold to Online Policy Group and dated December 3, 2003.

6. Exhibit E is a true and correct copy of the student plaintiffs' web site, posted at <http://www.sccs.swarthmore.edu/users/06/nelson/scdc/>, as it appeared on January 7, 2004.

7. Exhibit F is a true and correct copy of the web site located at <http://www.sccs.swarthmore.edu/org/scdc/> as it appeared on October 22, 2003.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed at San Francisco, California, on January 12, 2004.



Adam R. Sand

[[Date Prev](#)][[Date Next](#)] [[Chronological](#)] [[Thread](#)] [[Top](#)]

Re: Synopsis of .abo files

- **To:** tyler@gesn.com
 - **Subject:** Re: Synopsis of .abo files
 - **From:** Guy Lancaster <glanca@gesn.com>
 - **Date:** Thu, 18 May 2000 17:03:40 -0700
 - **Cc:** Support <support@gesn.com>
 - **Organization:** Global Election Systems Inc.
 - **References:** <NDBBLGPLOMMHOMJPHOIEKNCDAA.tyler@gesn.com>
-

Tyler Links wrote:

Could you provide a synopsis of the basic behavior of each of the .abo files which GEMS supports? You know, the basic stuff, which ones produce long tapes, which ones produce short tapes, which ones give you a choice, which ones show all of the long tape information, which ones only show a ballots cast summary, which ones have specific certification language at the end, etc. I don't want to put too fine a point on it, but I requested this 11 months ago.

I think that I got Nel to volunteer for this one and then it got sidelined on his job list. Sorry about that. What I'm going to do is give you the raw comments from the source file headers. Here goes:

194 Canadian:

```
REM 194can.abs - The standard Accu-Basic Source file for Canada.
REM In election mode this produces a short precinct totals report
REM for the default election results and offers to print short
REM reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM *****
REM 96-10-11 GLL Created from stdcan.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 97-03-27 GLL Add page before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters.
REM *****
```

194 Demo:

```
REM 194demo.abs - The standard Accu-Basic Source file for the demonstrations.
REM In election mode this produces a short summary report for the default
REM election results and offers to print short reports with summaries and
```

```

REM precinct breakdowns until powered off.
REM In pre-election and post-election modes it will print all combinations
REM of short reports.
REM *****
REM 96-10-10 GLL Created from stddemo.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 97-03-27 GLL Add PAGE before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters.
REM *****

```

194 French:

```

REM 194fr.abs - The standard Accu-Basic Source file for the French Canada.
REM In election mode this produces a short precinct totals report
REM for the default election results and offers to print short
REM reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM NOTE: This does not handle cross endorsed candidates.
REM *****
REM 96-10-11 GLL Created from stdus.abs and old stdfr.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 96-10-22 GLL Fix problem where get_yesno() was printing "NO".
REM 96-10-30 GLL Clean up ballot count reporting.
REM 96-11-01 GLL Add numeric default straight party codes up to 16.
REM 97-03-27 GLL Add PAGE before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters.
REM 99-10-25 GLL Print only the blank lines in the signatures section.
REM *****

```

194 US:

```

REM 194us.abs - The standard Accu-Basic Source file for the United States.
REM In election mode this produces a short precinct totals report
REM for the default election results and offers to print short
REM reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM *****
REM 96-10-11 GLL Created from stdus.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 96-10-24 GLL print_wrapString() truncates trailing spaces.
REM 97-03-27 GLL Add PAGE before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters.
REM *****

```

```

-----
194 US 5 decimals:
REM 194us5d.abs - The standard Accu-Basic Source file for the United States
REM with 5 digits allowed for all counters.
REM In election mode this produces a short precinct totals report
REM for the default election results and offers to print short
REM reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM *****
REM 96-10-11 GLL Created from stdus5d.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 97-03-27 GLL Add PAGE before prompts.
REM *****

```

```

-----
194 California:
REM 194usca.abs - The Accu-Basic Source file for the state of California.
REM In election mode this produces a cards cast report
REM for the default zero totals and election results and offers
REM to print short reports with summaries and precinct breakdowns
REM until powered off. All results reports include cards cast with
REM party codes for closed primary ballots.
REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM *****
REM 00-05-16 GLL Created from 194usga.abs.
REM 00-05-28 GLL Also print just cards cast for election zero totals.
REM *****

```

```

-----
194uscpc: [VTS only]
REM 194uscpc.abs - The standard Accu-Basic Source file for Cambridge's
REM Preference voting in the United States.
REM In election mode this produces a short precinct totals report
REM for the default election results and offers to print short
REM reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM The candidate counts are not printed since they are always zero
REM for Cambridge Preference.
REM *****
REM 96-10-11 GLL Created from stdus.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 96-10-24 GLL print_wrapString() truncates trailing spaces.
REM 97-03-27 GLL Add PAGE before prompts.

```

REM 97-03-27 GLL Allow 5 digits for long counters.
 REM 97-10-23 GLL Suppress printing candidate counters.
 REM *****

 194 Georgia:
 REM 194usga.abs - The standard Accu-Basic Source file for the state of Georgia.
 REM In election mode this produces a short precinct totals report
 REM for the default election results and offers to print short
 REM reports with summaries and precinct breakdowns until
 REM powered off. All results reports include cards cast with
 REM party codes for closed primary ballots.
 REM In pre-election and post-election modes it will print all
 REM combinations of long and short reports.
 REM *****
 REM 00-05-11 GLL Created from 194us.abs.
 REM 00-05-28 GLL Enable searching for partisan card party code.
 REM *****

 194 Illinois:
 REM 194usil.abs - The Accu-Basic Source file for the the State of Illinois.
 REM In election mode this produces a short precinct totals report
 REM for the default election results and then offers to print short
 REM precinct breakdowns. In the election end and post-election
 REM modes it offers to repeat this until powered off.
 REM
 REM In pre-election mode it will print these or a summary.
 REM
 REM In pre and post election modes, it offers to print long
 REM versions of the reports.
 REM
 REM For Illinois we include blank votes in the undervotes.
 REM *****
 REM 00-01-18 GLL Adapted from 194us.abs for Illinois.
 REM 00-01-28 GLL Modified to not offer summaries of election results.
 REM 00-01-28 GLL Modified to offer each pct result after election default.
 REM 00-02-16 GLL Fix undervotes to use race.vote_for rather than no_running.
 REM *****

 194usjc: [VTS only]
 REM 194usjc.abs - The Accu-Basic Source file for Jefferson County as requested by Debbie Musser.
 REM This version is based on the 194us.abs as of Jan. 6, 1998 but is modified to suppress
 REM the straight party races.
 REM
 REM In election mode this produces a short precinct totals report
 REM for the default election results and offers to print short
 REM reports with summaries and precinct breakdowns until
 REM powered off.

```

REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM *****
REM 96-10-11 GLL Created from stdus.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 96-10-24 GLL print_wrapString() truncates trailing spaces.
REM 97-03-27 GLL Add PAGE before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters.
REM *****

```

194 Massachusetts:

```

REM 194usma.abs - The standard Accu-Basic Source file for the states of
REM MA, NH, ME, CT, and RI which:
REM - report all non-used votes as blank votes,
REM - prints ballot summary after race summary,
REM In election mode this produces a short precinct totals report for the
REM default election results and offers to print short reports with
REM summaries and precinct breakdowns until powered off.
REM In pre-election and post-election modes it will print all combinations
REM of long and short reports.
REM *****
REM 96-10-11 GLL Created from stdusma.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 97-03-27 GLL Add PAGE before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters.
REM *****

```

194 Minnesota:

```

REM 194usmn.abs - The Accu-Basic Source file for the state of Minnisota.
REM In election mode this produces a short precinct totals report
REM for the default election results and offers to print short
REM reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM *****
REM 97-05-14 GLL Modified from 194us.abs.
REM *****

```

194 US Summary:

```

REM 194ussm.abs - Accu-Basic Source file for summary only election night results.
REM In election mode this produces a short summary totals report
REM for the election results and then offers to print short
REM reports with summaries and precinct breakdowns until
REM powered off.

```

```

REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM *****
REM 96-10-11 GLL Created from stdus.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 96-10-24 GLL print_wrapString() truncates trailing spaces.
REM 97-03-27 GLL Add PAGE before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters.
REM *****

```

194 Virginia:

```

REM 194usva.abs - The standard Accu-Basic Source file for the Virginia, USA
REM which:
REM - prints long reports in election mode.
REM In election mode this produces a long precinct totals report with
REM an optional summary report for the default election results and offers
REM to print short reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all combinations
REM of long and short reports.
REM *****
REM 96-10-10 GLL Created from stdusva.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 97-03-27 GLL Add PAGE before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters.
REM *****

```

194 Vermont:

```

REM 194usvm.abs - The standard Accu-Basic Source file for the state of Vermont
REM which:
REM - reports blank votes as undervotes,
REM - prints ballot summary after race summary,
REM - always reports write-in ballots in summary.
REM In election mode this produces a short precinct totals report with
REM an optional summary report for the default election results and offers
REM to print short reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all combinations
REM of long and short reports.
REM *****
REM 96-10-11 GLL Created from stdusvm.abs.
REM 96-10-22 GLL Fix to handle xtot as unsigned.
REM 96-10-22 GLL Modified to avoid malloc bug in pre 194f^ (1.94l) releases.
REM 97-03-27 GLL Add PAGE before prompts.
REM 97-03-27 GLL Allow 5 digits for long counters
REM 00-01-25 GLL Print card summary on short as well as long reports.

```


REM *****

194 Wisconsin:

REM 194uswi.abs - The Accu-Basic Source file for the state of Wisconsin.
REM This is based on 194us.abs but prints RPT UNIT instead of
REM PRECINCT and prints SCATTERING instead of WRITE-INS for the
REM race results.

REM *****

REM 00-01-11 GLL Modified from 194us.abs for Wisconsin.

REM *****

195 Anoka:

REM 195anoka.abs - The Accu-Basic Source file for Anoka Co., Minnisota.
REM In election mode this produces a short precinct totals report
REM for the default election results and offers to print short
REM reports with summaries and precinct breakdowns until
REM powered off.
REM In pre-election and post-election modes it will print all
REM combinations of long and short reports.
REM Candidates are printed in the order that they appear on the
REM first ballot card containing the race.
REM Precinct headings print the new precinct name string.

REM *****

REM 98-09-14 GLL Modified from 194anoka.abs.

REM 99-02-04 GLL Added VOTECTR.NAME to label.

REM *****

195 Wisconsin:

REM 195uswi.abs - The Accu-Basic Source file for the state of Wisconsin.
REM This is based on 194us.abs but prints RPT UNIT instead of
REM PRECINCT and prints SCATTERING instead of WRITE-INS for the
REM race results. It also prints the vote center name on the
REM label.

REM *****

REM 00-01-19 GLL Modified from 194us.abs for Wisconsin.

REM *****

I can't guarantee that these descriptions are accurate but we try. Anyone want to volunteer to turn this into a proper document?

Guy

-
- Follow-Ups:
 - RE: Synopsis of .abo files

- *From:* "John McLaurin Earthlink" <jmglobal@earthlink.net>

- **References:**

- **Synopsis of .abo files**

- *From:* "Tyler Links" <tyler@gesn.com>

- Prev by Date: **Modem settings in GEMS**

- Next by Date: **Resumes**

- Index(es):

- **Chronological**

- **Thread**

[[Date Prev](#)][[Date Next](#)] [[Chronological](#)] [[Thread](#)] [[Top](#)]

Re: BallotStation 4.0.5

- **To:** <support@gesn.com>
- **Subject:** **Re: BallotStation 4.0.5**
- **From:** "Talbot Iredale" <tiredale@gesn.com>
- **Date:** Tue, 26 Jun 2001 14:09:50 -0700
- **References:** <011301c0fe6c\$d78d5220\$1404a8c0@gesn.com> <005801c0fe82\$d2f52a60\$0203a8c0@GES001>

Yes.

Tab

----- Original Message -----

From: [Tari Runyan](#)
To: support@gesn.com
Sent: Tuesday, June 26, 2001 1:58 PM
Subject: Re: BallotStation 4.0.5

Dumb question : So the BS NT is supposed to be loaded on our R4 (blue and whites) for testing ?
 Tari

----- Original Message -----

From: [Talbot Iredale](#)
To: [Software Announcements](#)
Sent: Tuesday, June 26, 2001 12:21 PM
Subject: BallotStation 4.0.5

BallotStation 4.0.5 is for both WinCE and WinNT/Win95 now on the ftp site.

BallotStationCE-4-0-5-0.zip password anidjs8d9s7ds
 BallotStationNT-4-0-5-0.zip password 8snsud7s6d5sa

Tab

- **References:**
 - **Re: BallotStation 4.0.5**
 - *From:* "Tari Runyan" <trglobal@earthlink.net>
- Prev by Date: **[Re: BallotStation 4.0.5](#)**
- Next by Date: **[diebold info](#)**
- Index(es):
 - **[Chronological](#)**
 - **[Thread](#)**

[\[Date Prev\]](#)[\[Date Next\]](#) [\[Chronological\]](#) [\[Thread\]](#) [\[Top\]](#)

Moving

- **To:** announce@dieboldes.com
 - **Subject:** Moving
 - **From:** Robert Chen <chenrob@pacbell.net>
 - **Date:** Fri, 22 Feb 2002 07:37:51 -0800
 - **Importance:** Normal
-

Hi everyone,

I am moving this weekend and so my address and phone numbers are going to change:

671 Alvarado Street
San Francisco, CA
94114

phone: (415) 282-3080

My cell, fax and email contact information remains the same:

cell: (415) 871-4900
fax: (415) 276-1794
email: chenrob@pacbell.net

Take care,

rob chen

- **Prev by Date:** [dieboldes.com email problems](#)
- **Next by Date:** [Vancouver Telephone Lines](#)
- **Index(es):**
 - [Chronological](#)
 - [Thread](#)

[\[Date Prev\]](#)[\[Date Next\]](#) [\[Chronological\]](#) [\[Thread\]](#) [\[Top\]](#)

Cell

- **To: "Support (E-mail)"** <support@gesn.com>
 - **Subject: Cell #**
 - **From: "Jane L. Barth"** <jbglobal@earthlink.net>
 - **Date: Tue, 30 Mar 1999 10:27:59 +0100**
-

Hi everyone,

My cell phone # is 402 871-3340.

Thanks,
Jane Barth
Omaha

- **Prev by Date: [Password for Gems 1-7-5](#)**
- **Next by Date: [Fw: Multiple uploads with no reset Fw: GEMS software versions](#)**
- **Index(es):**
 - **[Chronological](#)**
 - **[Thread](#)**

[Return to News & Events](#)

For Immediate Release: October 31, 2003

Contact: Tom Krattenmaker

610-328-8534

tkratte1@swarthmore.edu

<http://www.swarthmore.edu/news/>

Swarthmore Administration Taking Steps To Support Student Action in Diebold Matter

SWARTHMORE, Pa. -- The Swarthmore College administration is taking steps to support student activists who are challenging efforts by Diebold, Inc., to suppress the circulation of memos calling attention to problems with the company's electronic voting machines.

In keeping with the College's commitment to educate its students for socially responsible citizenship, it is challenging Diebold to justify its claim of copyright infringement and is helping students develop legal strategies to address the ethical and moral concerns motivating their attention to the Diebold voting machines.

Acting on legal counsel, the Swarthmore administration has advised students on the process for filing under the copyright law a "counter-notification" against Diebold's take-down demand. In addition, the administration has alerted students that it is defensible on fair-use and free-speech grounds to use their web sites to describe the content of the memos they have seen and their implications for American democracy, and to use their sites to inform interested members of the public that the memos are available at sites not associated with Swarthmore.

Legal counsel has advised the College that a federal district court ruling in a 1999 case, *Intellectual Reserve vs. Utah Lighthouse Ministry*, suggests that providing direct hyperlinks may be construed as contributory copyright infringement. Therefore, at this point, Swarthmore has not permitted such links to remain on student web sites cited by Diebold. It is the College's policy not to actively monitor or control the content of student, faculty, and staff web pages other than in response to specific legal concerns, a policy the College is continuing to follow.

Swarthmore president Alfred H. Bloom said, "The College is deeply proud of its students' resolve to act on behalf of an open and fair democracy and believes that the finest teaching of civic responsibility encourages students to act on their commitment to a better society by first seeking approaches within the law to reach socially significant goals, before considering civil disobedience."

For more information, read some of the [national press coverage of this issue](#). Dean Gross issued a statement on Oct. 27; [read it here](#).

Document published by the [Office of News and Information](#).
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Pepper Hamilton LLP
Attorneys at Law

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Philadelphia, PA 19103-2799
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Fax 215.981.4750

Vincent V. Carissimi
direct dial: 215.981.4351
direct fax: 215.689.4625
carissimiv@pepperlaw.com

November 7, 2003

Via Facsimile & Certified Mail
-Return Receipt Requested

Ralph E. Jocke, Esquire
Walker & Jocke
231 South Broadway
Medina, OH 44256-2601

Re: **Counter-Notification**

Dear Mr. Jocke:

As you know we represent Swarthmore College regarding the notices of copyright infringement you addressed to Ms. Judy Downing on behalf of Diebold, Incorporated and its wholly owned subsidiaries Diebold Election Systems, Inc. and Diebold Election Systems ULC (collectively "Diebold"). As you were informed in my letter of October 23, 2003, in response to your notices certain allegedly infringing material was removed from Swarthmore's server.

Attached to this letter transmitted by facsimile and enclosed with the letter transmitted by certified mail is a counter-notification by two Swarthmore students affected by your take-down notices. Please note that the counter-notification references two sites where the allegedly infringing materials had been moved prior to Swarthmore making demand of the students. Following demand by Swarthmore, the allegedly infringing materials were removed from these sites. Although the web pages identified in the counter-notification are not precisely those identified in your take-down notices, we are informed that the allegedly infringing materials of which Diebold complained are the materials identified in the take-down demand and the ones which will be posted on these websites should Diebold not take action. Based on this counter-notification, it is the intention of Swarthmore College to replace the identified removed material or cease disabling access to it within ten (10) business days.

In the event, therefore, that Ms. Downing does not receive notice from you within ten (10) business days that Diebold has filed an action seeking a court order to restrain the subscribers from engaging in the alleged infringing activity relating to the material described in the counter-notification, Swarthmore College intends to replace the removed material and cease disabling access to it as provided in 17 U.S.C. §512.

Philadelphia

Washington, D.C.

Detroit

New York

Pittsburgh

Berwyn

Cherry Hill

Harrisburg

Princeton

Tysons Corner

Wilmington

Pepper Hamilton LLP
Attorneys at Law

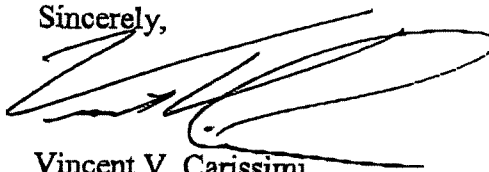
Ralph E. Jocke, Esquire

November 7, 2003

Page 2

This letter does not constitute acknowledgement or recognition of either the rights Diebold claims in the allegedly infringing materials or an obligation under copyright law to remove such materials. Swarthmore College hereby expressly reserves its right to assert any and all defenses to any claims that may be asserted against it by Diebold and to take any other appropriate action in light of Diebold's refusal to provide the materials requested by Swarthmore evidencing its claim of copyright in the alleged infringing materials.

Sincerely,



Vincent V. Carissimi

VVC/ns
Enclosure

cc: Judy Downing
Luke Thomas Smith
Nelson Chu Pavlosky

November 6, 2003

Judy Downing
Director of Information Technology Services
Swarthmore College
Beardsley Hall
500 College Avenue
Swarthmore, PA 19081

Dear Ms. Downing:

Please find attached to this letter a list of materials, collectively known as the Diebold email archive, which were posted on the Swarthmore Coalition for the Digital Commons website and which were removed by the school following a complaint from Diebold company on October 22nd, 2003.

This letter is our counternotice to that complaint. We are filing this counternotice now, following Swarthmore's recent notification on October 31, 2003 that it would accept counternotice from us. Until that announcement, we were not sure whether Swarthmore was acting as our college, or as a service provider under 17 U.S.C. Section 512.

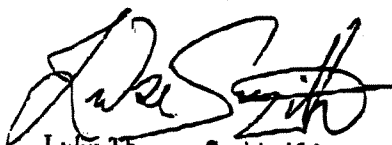
We have a good faith belief that the Diebold email archive was disabled in error as a result of mistake or misidentification of the material, including that our posting of this material constituted fair use under copyright law. We declare that this is true and accurate under penalty of perjury under the laws of the United States of America.

For the purposes of this matter, we consent to the jurisdiction of the Federal District Court for the judicial district in which we reside. We also consent to notice of service by the person providing notification under Section 512 (c)(1)(C) or that person's agent. However, by this letter, we do not waive any other rights, including the right to pursue an action for the removal or disabling of access to this material, if wrongful.

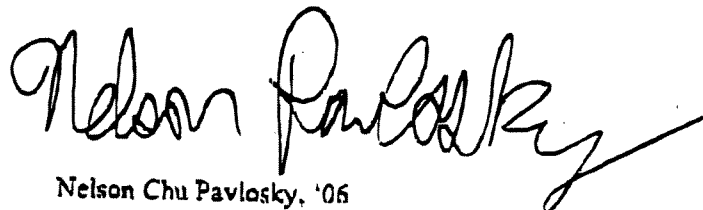
Having complied with the counternotice requirements of Section 512(g)(3), we expect that Swarthmore must now replace the blocked or removed materials set forth in the attachment and cease disabling access in ten to fourteen days of your receipt of this notice. Please notify us when this has been done.

We appreciate your prompt attention to this matter. If you have any questions about this notice, please do not hesitate to contact us.

Sincerely yours,



Luke Thomas Smith, '06
500 College Avenue
Swarthmore, PA 19081
610-690-5546
lsmith1@swarthmore.edu



Nelson Chu Pavlosky, '06
500 College Avenue
Swarthmore, PA 19081
610-690-3892
npavlos1@swarthmore.edu

 **Electronic Frontier Foundation**

Diebold Election Systems, Inc.
1611 Wilmeth Road
McKinney, TX 75069
972 542-6000
fax 972 542-6044
www.dieboldes.com

December 3, 2003

Dear Mr. Doherty:

As President of Diebold Election Systems, Inc., I wish to inform you that our company is withdrawing the notification recently issued under the Digital Millennium Copyright Act of 1998. Diebold has decided not to sue ISPs or their subscribers now or in the future for copyright infringement for the non-commercial use of the materials posted to date, even though the uses may not qualify as "fair use" under the law.

From the outset, I want to emphasize that Diebold's overarching goal is to assist voters in exercising their most fundamental constitutional right: the right to vote. We believe that our touch screen and other electronic voting technologies are a major leap forward in helping more Americans vote with increased accuracy and accessibility. Touch screen technology eliminates "overvoting" and significantly reduces "undervoting." In addition, our touch screen technology offers multi-lingual ballot capability and enables the visually impaired to vote without assistance for the first time in their lives.

We recognize that how America votes is a matter of intense public interest, as it should be, and we support the electorate's right to participate in an open and robust debate on that topic. I want to assure you that my company's use of the Digital Millennium Copyright Act in response to the theft of internal information and development materials does not diminish our commitment to the constitutional values of our country.

No company-whether an ISP, a software developer, or any type of company-wants its internal conversations openly broadcast, and I am sure your internal business correspondence includes information involving the unique capabilities and insights that you feel are important to the successful operation of your company. The correspondence between individuals within our company often contains information concerning unique software, features and capabilities that provide Diebold with a potential advantage in a competitive marketplace. This type of information constitutes Diebold's work product and important intellectual property.

With that background, here is what led to the current situation. In January of this year, some software and other material was inadvertently exposed through a website of a predecessor company. In March, a hacker broke into one of our servers and stole a considerable quantity of our documents including a significant archive of information which is proprietary to Diebold. As you can imagine, the issue for Diebold, as for any other company in a similar circumstance, was what to do about the theft of its property in which it had a copyright interest, especially given the ease and quickness with which the stolen material could and did spread around the Internet.

In order to protect its intellectual property rights, Diebold chose to notify ISPs, as expressly permitted by

the DMCA, that stolen material, in which Diebold has a copyright interest, was being hosted on or linked to websites under the ISP's control. Although we believe our legal position was and continues to be correct, we recognize that our DMCA efforts have become the story, and may be influencing the debate on how America's votes can be recorded and tallied most accurately.

To help refocus the public debate on that central issue, and recognizing that a considerable amount of the stolen email archive is now widely available on the Internet, Diebold has decided not to sue ISPs or their subscribers for copyright infringement for the non-commercial use of the materials. We are also withdrawing the DMCA notifications previously sent to you and other ISPs.

In taking this action, we are underscoring Diebold's commitment not only to provide the best voting systems in America, but to contribute to a robust public debate on how to record and tally the vote most accurately and efficiently. We welcome your input and suggestions concerning how we as citizens can further enhance the election process. Please let me know if you have any questions or comments concerning our position.

Sincerely,

Robert J. Urosevich
President

Swarthmore Coalition for the Digital Commons

Get the Diebold Memos here!

9 December 2003

Diebold has withdrawn all of its DMCA notices, and has promised not to send out any more. They're very sorry, and they won't let it happen again. This means that you can mirror the memos freely! Nobody will do anything to you! We can now use these vital documents in public discussion without fear.

- **Browse and download the entire Diebold memo archive**
- Search the archive
- View the wiki for the student anti-Diebold campaign at papertrailpatriots.org.
- Enter the SCDC website and learn more about us.

As stated on the EFF's page on the Diebold suit, we are suing Diebold to halt their efforts to shut down any website that hosts or links to the memos. We are represented by Stanford's Cyberlaw Clinic, and our co-plaintiffs are the Online Policy Group, who is represented by the EFF.

Our most recent project (apart from the lawsuit) was "Choosing Clarity: A Symposium on Voting Transparency", a conference that we held at Swarthmore College on Saturday, December 6th. We intend to hold another similar symposium again next semester.

You can enter the main site to learn more about the SCDC if you're really interested, but we keep getting Slashdotted :-D So response times may be slow.

Please bookmark this page as
<http://scdc.emegaweb.net> or
<http://scdc.sccs.swarthmore.edu>.

- NY Times:
File Sharing Pits Copyright Against Free Speech
- the Associated Press news wire picks up the story
- Daily Gazette article
- Wired News article
- why-war?
- EFF's report on the DMCA
- black box voting website

What is SCDC?

The Swarthmore Coalition for the Digital Commons is a student organization at Swarthmore College inspired by the Electronic Frontier Foundation, Lawrence Lessig, Creative Commons and the Free Software Foundation. It is dedicated to promoting a bottom-up, participatory structure to society and culture, maintaining free and open standards for information, and resisting the recent radical expansion of intellectual property law (as exemplified by the Digital Millenium Copyright Act). Read more about us in this article.

For a personal perspective on the lawsuit, you can visit Nelson's blog on Diebold, and you can read on interesting developments in the intellectual commons in the Geek section of his blog.

We were awarded Guerillas of the Week by the Guerilla News Network on October 27th! Well, not just the SCDC, but everyone at Swarthmore who did their part to keep the memos in the public eye. Everyone give yourselves a pat on the back :-)

Contact: Nelson Pavlosky (npavlos1 at swarthmore dot edu) and Luke Smith (lsmith1 at swarthmore dot edu)

Swarthmore Coalition for the Digital Commons
Statement on Hosting of Diebold Memos
21 October 2003

The Swarthmore Coalition for the Digital Commons and Why-War? are calling for people to host memos that reveal security flaws in the electronic voting software of Diebold Election Systems.

- [the memos \(updated\)](#)
- [Wired News article](#)

Two weeks ago, [Why War?](#), a peace and justice group at Swarthmore College, posted memos from Diebold Election Systems to [why-war.com](#). These memos reveal extreme security flaws in their electronic voting systems. Diebold sent Why-War's ISP a cease-and desist letter claiming that, by hosting the memos, why war was guilty of copyright infringement. However, lawyers from the Electronic Frontier Foundation ([eff.org](#)) have determined that posting the memos constitutes fair use for this material.

At the time, Why-War's website was the the only remaining source of the memos in the US. Diebold had succeeded in suppressing information about flaws in their machines that make a mockery of the democratic process. Security holes in Diebold software could easily allow (and may already have allowed) for votes to be changed, without leaving any evidence, by anyone with access to the machines.

After that, a student at Swarthmore moved the files to a computer on the College network. The College was then contacted by Diebold, and the memos were once again taken down.

Now, however, in a joint action with Why-War?, the Swarthmore Coalition for the Digital Commons is calling for students to independently volunteer to host the files. Students will host the memos one at a time until Diebold contacts the College to block them.

The Swarthmore Coalition for the Digital Commons is committed to resisting the use of intellectual property law to suppress information that is critical to the public welfare. If there's anything that the public has a right to know about, it's how their votes are counted. This is just another example of how laws like the DMCA work against the public good. Monopoly rights to information should only be granted to the extent that they benefit the public --

What is SCDC?

The [Swarthmore Coalition for the Digital Commons](#) is a student organization at Swarthmore College inspired by the Electronic Frontier Foundation, Lawrence Lessig, Creative Commons and the Free Software Foundation. It is dedicated to promoting a bottom-up, participatory structure to society and culture, maintaining free and open standards for information, and resisting the recent dramatic expansion of intellectual property law (as exemplified by the Digital Millenium Copyright Act). Read more about us [in this article](#).

this is how "intellectual property" is different from physical property. Election contracts should be granted to open-source developers who make their code available for public scrutiny ... in contrast with Diebold, a developer that seeks to suppress information about egregious flaws in their voting systems.

- [the memos \(updated\)](#)
- [Wired News article](#)
- [why-war?](#)
- [eIT's report on the DMCA](#)
- [black box voting website](#)

Contact: Luke Smith ([lsmith1 at swarthmore dot edu](mailto:lsmith1@swarthmore.edu)) and Nelson Pavlosky ([npavlos1 at swarthmore dot edu](mailto:npavlos1@swarthmore.edu))