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Attorneys for Defendant
DIEBOLD, INCORPORATED, AND DIEBOLD
ELECTION SYSTEMS, INCORPORATED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA / SAN JOSE

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

Plaintiffs,

v.

**DIEBOLD, INCORPORATED, and
DIEBOLD ELECTION SYSTEMS,
INCORPORATED,**

Defendants.

Case No. 03-4913JF

**OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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

DECLARATION

I, Nancy L. Reeves, hereby state the following of which I have personal knowledge:

1. I am a member of the law firm of Walker & Jocke, L.P.A, of which Ralph E. Jocke is a principal.
2. Exhibit A is a true and accurate copy of the web page at <http://www.sccs.swarthmore.edu/users/06/nelson/scdc/documents.php>, as it existed on November 12, 2003.

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3. Exhibit B is a true and accurate copy of the web page at <http://www.sccs.swarthmore.edu/users/06/nelson/scdc/objectives.php>, as it existed on November 12, 2003.

4. Exhibit C is a true and accurate copy of correspondence sent to the online service provider NEIT Solutions on October 3, 2003, notifying NEIT Solutions of infringing material on the web site why-war.com. The why-war.com web page that is identified in the correspondence contained a single .pdf file consisting of approximately 3 MB of material stolen from Diebold, Incorporated, Diebold Election Systems, Inc., and Diebold Election Systems ULC (collectively "Diebold").

5. Exhibit D is a true and accurate copy of correspondence received by Walker & Jocke from NEIT Solutions in response to the correspondence which comprises Exhibit C.

6. Exhibit E is a true and accurate copy of correspondence sent to NEIT Solutions in response to the correspondence which comprises Exhibit D.

7. Exhibit F is a true and accurate copy of the web page at <http://www.indybay.org/news/2003/09/1649419>, as it appeared on November 11, 2003. The posts and links on the first page and the first line on the second page are substantially identical to those appearing in a similar position on the same web page on October 9, 2003.

8. Exhibit G is a true and accurate copy of the web page at <http://d176.whartonab.swarthmore.edu> as it appeared on October 9, 2003. The .pdf file consisted of approximately 3 MB of material stolen from Diebold.

9. Exhibit H is a true and accurate copy of a web page sponsored by the Swarthmore Coalition for the Digital Commons at http://www.sccs.swarthmore.edu/users/06/nelson/scdc/documents/swat_dmca.php, as cached by Google.com. The cached web page is substantially identical to the web page as it appeared on October 9, 2003.

10. Exhibit I is a true and accurate copy of correspondence sent to Swarthmore College on October 9, 2003, as a supplement to the correspondence also sent to Swarthmore College on October 9, 2003, which correspondence plaintiffs attached as an exhibit to their complaint.

11. Exhibit J is a true and accurate copy of the correspondence sent to Swarthmore College on October 9, 2003 identifying a second infringing file contained on the web page <http://d176.whartonab.swarthmore.edu>

12. Exhibit K is a true and accurate copy of an October 10, 2003 screen shot of a Google.com search on the term "diebold memos" which returned as the first entry the web page at <http://www.indybay.org/news/2003/09/1649419>.

13. Exhibit L is a true and accurate copy of the pages posted on the Swarthmore College Website detailing the policies of Swarthmore College associated with copyright and the Digital Millennium Copyright Act, including the counter notification provisions thereof.

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14. Exhibit M is a true and accurate copy of the pages posted at <http://www.swarthmore.edu/news/releases/03/diebold.html>, as it existed on November 12, 2003.

I hereby certify under penalty of perjury that the foregoing is true and correct. Executed this 12th day of November 2003.


