

**DENNIS J. KUCINICH**

10TH DISTRICT, OHIO

1730 LONGWORTH OFFICE BUILDING  
WASHINGTON, D.C. 20515  
(202) 225-5871

14400 DETROIT AVENUE  
LAKEWOOD, OHIO 44107  
(216) 228-8850



**Congress of the United States**  
**House of Representatives**

**Committees:**  
Government Reform  
Education  
and the  
Workforce  
[www.house.gov/kucinich](http://www.house.gov/kucinich)

November 21, 2003

Hon. F. James Sensenbrenner, Jr.  
Chairman  
House Judiciary Committee  
2332 Rayburn  
Washington, D.C. 20515

Hon. John Conyers  
Ranking Member  
House Judiciary Committee  
2426 Rayburn  
Washington, D.C. 20515

Dear Chairman Sensenbrenner and Ranking Member Conyers:

I write to you regarding a growing list of abuses under the Digital Millennium Copyright Act (DMCA) notice and takedown procedures that marginalize the fair use doctrine and seek to expand copyright beyond the scope that Congress and the judicial branch have established. The most recent and aggressive examples concern a subject at the core of our democracy, electronic voting machines. It is my hope that the dual importance of both jurisdictional issues, election reform and the DMCA, will merit an investigation by the Judiciary Committee.

This issue came to my attention as a result of the recent intimidation techniques of Diebold, Inc. Diebold, one of the nation's largest electronic voting machine manufacturers, is seeking to eliminate circulation of employee e-mails that raise concerns about the security of its electronic voting machines. Since early October 2003, Diebold has sent more than a dozen cease-and-desist letters to Internet Service Providers (ISPs) and universities that host websites that either posted Diebold employee e-mails or merely hyperlinked to other websites with the e-mails. The e-mail archive documents the employees' knowledge of: problems with the company's electronic voting machines; marketing and installation of uncertified versions of voting software and software upgrades; and use of off-the-shelf software programs, such as Microsoft Access, that could be compromised to hack into voting data and audit logs.

Diebold invoked the DMCA to pressure many ISPs and universities into removing websites and hyperlinks. These cease-and-desist letters were inappropriate. There is a compelling argument that the fair use doctrine precludes copyright liability for posting the e-mails. The archive is predominantly factual and was reproduced to inform the national public debate on election reform, specifically, on the machines used to count our votes. The e-mails do not harm any market of Diebold's, except in the sense that admitted problems may cause municipal and state purchasers to subject the machines to greater scrutiny.

Furthermore, numerous letters were sent to ISPs whose users only hyperlinked to other sites where the Diebold employee e-mails, were posted. Hyperlinks do not qualify for copyright protection, and their use does not incur copyright liability. In cases where ISPs complied with requests, they have often shut down entire websites for weeks at a time, instead of removing the

alleged infringing activity. The safe-harbor driven 10-business-day takedown period can remove non-infringing websites during a critical interval of discussion.

Diebold's actions are disconcerting for two reasons. First, Diebold's efforts seek to remove critical information from public debate. Voting is central to the foundation of our democracy and citizens have a right to learn about the voting machines they use. Diebold has already deployed thousands of voting machines in 37 states. If Diebold's machines are not secure, as its employees admit, and if it has illegally provided uncertified software patches and programs, as its employees admit, Diebold should not be permitted to hide this information from an interested public and Congress. The Judiciary Committee has worked diligently to pass the Help America Vote Act and ensure that voters can cast secure ballots with fairness and confidence. Voter confidence is diminished when voting machine manufacturers seek to limit free speech and hide or gloss over voting product flaws.

Second, Diebold's actions abuse the Digital Millennium Copyright Act, using copyright to suppress speech rather than fulfill the Constitution's purpose for copyright, to "promote progress." These abuses raise a fundamental conflict with the First Amendment, diminishing the Internet's tremendous value as a most free medium of expression. Diebold's actions are representative of a growing body of abuses through which large and powerful parties unfairly intimidate ISPs to remove information those parties do not like. In other examples, the claims are not really about copyright, but about not showing the parties in a negative light, or not allowing consumers to compare prices, or quieting religious critics. I have attached a list of recent abuses compiled by the Electronic Frontier Foundation. Powerful parties should not be permitted to misuse copyright as a tool for limiting bad press and barring access to legitimate consumer information.

These issues concern our right to free speech and the right of our citizens to learn and debate voting processes. Both issues are fundamental to our democracy. I urge the Committee to investigate these problems and take appropriate action as the facts are borne out. Thank you for your consideration and attention to these problems.

Sincerely,

A handwritten signature in black ink that reads "Dennis J. Kucinich". The signature is written in a cursive, slightly slanted style.

Dennis J. Kucinich  
Member of Congress

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