



DIGITAL BOOKS: A NEW CHAPTER FOR READER PRIVACY

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hat you choose to read says a lot about who you are, what you value, and what you believe. That is why you should be able to read about anything from politics to health without worrying that someone is looking over your shoulder. However, as books move into digital form, new reader privacy issues are emerging. In stark contrast to libraries that retain as little information about readers as possible, digital book services are capturing detailed information about readers including who they are, what books they browse and read, how long a given page is viewed, and even the notes written in the “margins.” Without strong privacy protections, all of this browsing and reading history can be collected and analyzed and could end up in the hands of the government or third parties without the reader’s knowledge or consent. Retaining and strengthening reader privacy in the digital age requires a thorough examination of the potential privacy and free speech implications of digital book services and the establishment of laws and policies that properly protect readers.

Digital Books: A New Chapter for Reader Privacy is the second in a series of issue papers by the ACLU of Northern California that discuss new technology trends and their consequences. This paper examines the history of reader privacy and explores opportunities for consumers, businesses, and policymakers to work together to update and enhance these protections.

Part I of this paper discusses the history of strong legal and policy protections for reader privacy. Part II covers the emerging privacy issues related to digital book services, and Part III evaluates whether existing legal protections are sufficient to address these issues. Finally, Part IV proposes policy and legislative steps that should be taken to safeguard reader privacy for the digital age. For more information about digital books and other online privacy and emerging technology issues, please visit the ACLU of Northern California *Demand Your dotRights* campaign website at www.dotrights.org.

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INTRODUCTION

It has long been recognized that the freedom to read without worrying about who is looking over your shoulder plays an essential role in the freedom of thought and speech necessary for a robust democracy. When the government and third parties have tried to collect and use evidence of reading habits in order to identify individuals with unpopular thoughts and beliefs, pivotal court decisions, state laws, and the ethics of librarians and booksellers have safeguarded the privacy and free speech of readers and helped to support the free exchange of ideas and open discourse. As ever-increasing numbers of readers move from physical books and libraries to digital book services, it is imperative that reader privacy be safeguarded.

Digital book services can provide consumers with many benefits such as access to books that might not be locally available, the ability to quickly search through books for specific words or phrases, and the ability to carry hundreds of digital books on a device that weighs less than a single hardcover. But readers must not be forced to pay for the convenience of digital books with their privacy.

Many consumers do not realize that digital book devices and online services have the ability to collect far more information about individuals and their reading habits than has been possible in the offline world. Furthermore, many providers have a strong economic incentive to retain this information for long periods of time to support an advertising-based business model. Finally, once information about consumers and their reading habits are collected, that information can be vulnerable to demands from the government and third parties.

As digital books become more popular, it is critical for companies, policymakers, and public interest groups to work together to: (1) develop robust protections related to information collection, use, and disclosure of digital book records; (2) aggressively defend reader privacy; and (3) update and develop new laws to ensure clear protections for digital reading records.

Part I of this paper discusses the history of strong legal and policy protections for reader privacy. Part II covers the emerging privacy issues related to digital book services, and Part III evaluates whether existing legal protections are sufficient to address these issues. Finally, Part IV proposes some policy and legislative steps that should be taken to safeguard reader privacy for the digital age.

In several areas of the paper we have more questions than answers. It is our hope that this issue paper will help to support a robust conversation between consumers, businesses, and policymakers to address these important questions about digital books and develop plans to address potential gaps in the existing legal framework for protecting privacy and freedom of expression.

PART I: HISTORY OF STRONG PROTECTIONS FOR READER PRIVACY

There is a long and proud history of legal protection for reading privacy in the United States. Decisions by the Supreme Court, other federal courts, and state courts have protected reader privacy at crucial junctures. In the 1950s, the Supreme Court upheld reader privacy, finding it unconstitutional for a bookseller to be convicted for refusing to provide the government with a list of individuals who had purchased political books. As Justice Douglas observed, “Once the government can demand of a publisher the names of the purchasers of his publications . . . [f]ear of criticism goes with every person into the bookstall . . . [and] inquiry will be discouraged.”¹ In the 1960s, the Supreme Court again protected reader privacy, striking down a requirement that individuals must file a written request with the postal service to receive “communist political propaganda” because such a requirement is “almost certain to have a deterrent effect.” The Court especially noted that “public officials, like schoolteachers who have no tenure, might think they would invite disaster if they read what the Federal Government says contains the seeds of treason.”²

“ONCE THE GOVERNMENT CAN DEMAND OF A PUBLISHER THE NAMES OF THE PURCHASERS OF HIS PUBLICATIONS... [F]EAR OF CRITICISM GOES WITH EVERY PERSON INTO THE BOOKSTALL... [AND] INQUIRY WILL BE DISCOURAGED.”

-JUSTICE DOUGLAS,
UNITED STATES V. RUMLEY (1953)

Federal and state courts have continued to set important precedents protecting reader privacy.³ When federal investigators attempted to use a grand jury subpoena to obtain Monica Lewinsky’s reading records from the Kramerbooks bookstore in Washington, D.C., the court held that the First Amendment required the government to “demonstrate a compelling interest in the information sought . . . [and] a sufficient connection between the information sought and the grand jury investigation”⁴ The Colorado Supreme Court similarly held that book records were clearly protected under the free speech provision of the Colorado state constitution, and in order to obtain such records, the government must meet a warrant plus standard, requiring not only a warrant but a prior adversarial hearing, notice to the provider, and showing of a compelling need.⁵

Protection for reading records has not been limited to the brick and mortar world. In a 2007 United States District Court case, the court quashed a government subpoena initially seeking the identities of 24,000 Amazon.com (hereinafter Amazon) book buyers because

[I]t is an unsettling and un-American scenario to envision federal agents nosing through the reading lists of law-abiding citizens...[I]f word were to spread over the Net—and it would—that the FBI and the IRS had demanded and received Amazon’s list of customers and their personal purchases, the chilling effect on expressive e-commerce would frost keyboards across America . . . well-founded or not, rumors of an Orwellian federal criminal investigation into the reading habits of Amazon’s customers could frighten countless potential customers into canceling planned online book purchases, now and perhaps forever.⁶

Courts have recognized, in both the offline and online context, that reader privacy must be protected to avoid a chilling effect on freedom of expression and maintain the trust of consumers. Digital book services should respect and defend the rights of their readers and not disclose book records to the government absent a properly-issued search warrant or to third parties absent a court order. However, courts have not yet had many opportunities to specifically consider digital book records, leaving their legal protection less clear than is the case for printed works.

STATE LAWS AND LIBRARY ETHICS HAVE PROVIDED IMPORTANT PROTECTION FOR READER PRIVACY AND FREE SPEECH

State laws and the dedication of librarians to safeguarding the rights of readers also have provided substantial additional support for anonymous reading. Virtually every state protects public library reading records from disclosure by statute.⁷ In many states, violating a public library reading record statute is a misdemeanor criminal violation.⁸ In addition to safeguarding library patron records, Rhode Island and Michigan both prohibit booksellers from disclosing information.⁹ For example, Michigan requires a warrant or court order before any business selling, renting, or lending books may disclose customer-identifying information. With these statutes, states have recognized the importance of having a citizenry that can access and read books without fear of monitoring.

**48 STATES
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REMAINING TWO,
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KENTUCKY, HAVE
ATTORNEY GENERAL
OPINIONS IN
SUPPORT OF READER
PRIVACY.**

The American Library Association (ALA) also has dedicated itself to protecting reading privacy. The ALA's Policy Manual guides all librarians that "the freedom to read is essential to our democracy" and "protecting user privacy and confidentiality is necessary for intellectual freedom and fundamental to the ethics and practice of librarianship."¹⁰ The Library Code of Ethics, first adopted in 1938, now reads:

We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted.¹¹

As online book services and e-readers grow in popularity, it will be important for both lawmakers and librarians to take an active role in identifying and addressing threats to reader privacy in the digital age.

PART II: DIGITAL BOOK SERVICES WITHOUT STRONG PROTECTIONS HAVE THE POTENTIAL TO THREATEN A LONG AND PROUD HISTORY OF READING PRIVACY

Increasingly, readers are moving away from reading physical books at bookstores, libraries, and in their homes and toward reading on electronic devices and the Internet.¹² Google has spent the last five years digitizing millions of books

from some of the United States' biggest libraries and is attempting to finalize a settlement to make available most of the books scanned in this endeavor.¹³ In the last few years, digital reading devices have been released by several companies, including Amazon, Sony, and Barnes & Noble, and sales of digital books have been climbing. Without strong protections in place, the growth of book services has the potential to threaten a long and proud history of reading privacy.

DIGITAL BOOK SERVICE PROVIDERS CAN COLLECT MUCH MORE DATA ON READERS THAN LIBRARIES OR BOOKSTORES EVER COULD

Digital book services have the ability to collect and retain very detailed information about readers. The level of detail that these services can collect would require an offline library or bookstore to hire an agent to follow each individual patron around the stacks, throughout their day, and finally into their homes. Digital book providers can easily track what books an individual considers, how often a given book is read, how long a given page is viewed, and even what notes are written in the "margins." As reading has moved online, it also has become much easier to link books that are browsed or read with a reader's other online activities, such as Internet searches, emails, cloud computing documents, and social networking. With all of this information, companies can create profiles about individuals, their interests and concerns, and even those of their family and friends.

This tracking is already occurring. For example, Google Books currently tracks: 1) a reader's initial search query; 2) the specific book browsed and page viewed; 3) the date/time of the search or page view; 4) the reader's Internet Protocol address, browser, and computer operating system; and 5)

one or more cookies that uniquely identify the reader's browser.¹⁴ In a January 2009 *New York Times* article, a senior member of Google Book Search's engineering team illustrated the kind of detailed information that the company collects. He admitted that he "was monitoring search queries recently when one...caught his attention." The engineer could easily tell that the reader spent four hours perusing 350 pages of an obscure 1910 book.¹⁵ If a reader has logged in to other Google services such as Gmail at the time he searches for a book, Google can link reading data to the reader's unique Google account. Google also retains the right to combine all this information with information gleaned from its DoubleClick ad service, which tracks users across the Internet.¹⁶



GOOGLE BOOKS CURRENTLY TRACKS:

- 1) A READER'S INITIAL SEARCH QUERY;**
- 2) THE SPECIFIC BOOK BROWSED AND PAGE VIEWED;**
- 3) THE DATE/TIME OF THE SEARCH OR PAGE VIEW;**
- 4) THE READER'S INTERNET PROTOCOL ADDRESS, BROWSER, AND COMPUTER OPERATING SYSTEM; AND**
- 5) ONE OR MORE COOKIES THAT UNIQUELY IDENTIFY THE READER'S BROWSER.**

Amazon can and does track similar information on readers who use its Kindle. As each Kindle is unique and automatically linked to one particular account holder, the potential for tracking specific reading habits may be even greater than with Google Books. Amazon retains information about the books, magazine subscriptions, newspapers and other digital content on the Kindle and the reader's interaction with that content. This includes an automatic bookmark of the last page read, the content deleted from the device, and any annotations, bookmarks, notes, highlights, or similar markups made by the reader.¹⁷ The company's control over its users' reading habits extends beyond merely tracking them. Amazon's ability to control content on the Kindle has allowed it to delete whole books without the account holder's knowledge or consent.¹⁸

Once reader information is collected, it may stay in the companies' files for an indefinite time. Google has only promised to make a "good faith effort" to provide users with the opportunity to delete personal information.¹⁹ Amazon customers must contact third-party advertisers and websites directly in order to access or opt out of their information collection practices.²⁰

COMPANIES HAVE STRONG BUSINESS INCENTIVE TO COLLECT INFORMATION

There are strong incentives for companies to collect detailed information about readers and to retain it for as long as possible. It is no secret that information about readers means more lucrative targeted advertising. In addition, by using collected information, companies may be able to attract customers who appreciate customized recommendations for books based on past reading history or interests.

According to industry experts, companies can expect up to 10 times the revenue for advertisements based on behavioral data.²¹ Google is no stranger to the concept that the more it knows about individuals, the higher the advertising profits, both for Google and for its advertising partners. Google's CEO Eric Schmidt has explained that "the ads are worth more if they're more targeted, more personal, more precise."²²

Schmidt has made clear the company's interest in amassing and analyzing as much information as possible about users of all of its services. And according to Schmidt, Google's current extensive data collection is just the tip of the iceberg:



AMAZON CURRENTLY TRACKS:

- 1) THE TIME EACH KINDLE IS LOGGED ONTO AMAZON'S NETWORK;**
- (2) WHAT OTHER BOOKS, MAGAZINE SUBSCRIPTIONS, NEWSPAPERS OR DIGITAL CONTENT ARE ON THE DEVICE;**
- (3) EACH READER'S INTERACTION WITH CONTENT, INCLUDING THE LAST PAGES READ, ANY ANNOTATIONS, NOTES OR HIGHLIGHTS, AND A RECORD OF ANY CONTENT DELETED FROM THE DEVICE.**

We are very early in the total information we have within Google. The algorithms will get better and we will get better at personalization. The goal is to enable Google users to be able to ask the question such as 'What shall I do tomorrow?' and 'What job shall I take?' [...] We cannot even answer the most basic questions because we don't know enough about you. That is the most important aspect of Google's expansion.²³

**ACCORDING TO
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Google has not spent millions of dollars digitizing the world's books out of the goodness of its heart.²⁴ Detailed information about the identity and interests of millions of readers collected through the Google Book Search product could provide an important additional source of information for its algorithms and further aid in targeted advertising.

PART III: CURRENT SAFEGUARDS FOR READER PRIVACY MAY BE INADEQUATE TO PROTECT READERS' AND COMPANIES' BOTTOM LINE

While there are economic incentives to collect information about readers, there are also important reasons, both for the public good and the bottom line, for robust reader privacy protections for digital book records. Readers are increasingly concerned about the extent to which their reading habits are tracked, and may abandon digital books if they feel their privacy is at risk. Unfortunately, some legal standards are outdated and may not extend the strong protections accorded to library and bookstore records to the records generated and held by digital book services.

READERS DEMAND PRIVACY FOR THEIR BOOK RECORDS

The tracking and retention of data on digital book services may chill people from accessing particular sites and purchasing particular books if they fear how that information could end up being used or abused. This fear is not paranoia, but based on a long history of government and third party attempts to collect and use evidence of reading habits in order to identify individuals with unpopular thoughts and beliefs. During the McCarthy hearings, Americans were questioned on whether they had read Marx and Lenin and even whether their friends had books about Stalin on their bookshelves.²⁵ History repeated itself when, following September 11, the FBI demanded that libraries turn over information on patrons. It is estimated that by December 2001, 85 libraries had been approached by the FBI and that more than 200 libraries were targeted between 2001 and 2005.²⁶ But in these cases, and other situations where the right to read has been under assault, pivotal court decisions, state laws, and the actions of librarians and booksellers have safeguarded the privacy and free speech of readers and helped to support the free exchange of ideas and open discourse.

When consumers feel their privacy is not being properly protected, businesses get the cold shoulder. When a grand jury issued a subpoena demanding that Kramerbooks disclose its patrons' book purchases, many customers told the

bookstore that they no longer would shop there because they believed that it had disclosed book records.²⁷ Consumers have also expressed strong dissatisfaction with targeted advertising business models that customize the advertisements shown based on the websites a user has visited and the content she has viewed, even when assured that the tracking is “anonymous.” In a recent nationwide survey, 68 percent of adults said that they “definitely would not allow it.”²⁸ Further, 69 percent feel there should be a law that gives people the right to know everything that a website knows about them and 92 percent believe there should be a law that requires “websites and advertising companies to delete all stored information about an individual, if requested to do so.”²⁹

If there are not adequate protections in place to limit collection, retention, and use of detailed book records and to safeguard that information from disclosure to third parties and the government, consumers are not going to feel confident using digital book services. Reducing the number of books that people feel safe accessing is not good for public discourse or for a company’s bottom line.

CURRENT PRIVACY LAWS MAY NOT ADEQUATELY PROTECT DIGITAL BOOK READERS

Unfortunately, while new digital book technologies offer to revolutionize access to books, legal protections have not kept pace. Instead, due in part to outdated privacy laws, the government and third parties may be able to read over the shoulders of individuals who read these digital books.

As noted above, there are various state laws and federal and state court decisions that protect the privacy of reading records. However, many of the state book privacy laws were written for the library context and did not anticipate online services that can collect vast amounts of information about reading habits. While there is also strong federal and state court precedent protecting the privacy and free speech rights inherent in book records, neither Amazon or Google currently promises to demand a warrant or even a court order if asked to turn over customers’ digital book records to the government. In fact, Google’s Privacy Policy reserves the right to disclose user information whenever it has a “good faith belief” that disclosure is reasonably necessary to “satisfy any applicable law, regulation, legal process or enforceable governmental request.”³⁰ Similarly, Amazon reserves the right to disclose subscriber information whenever release is appropriate to comply with the law; enforce or apply our Conditions of Use and other agreements; or protect the rights, property, or safety of Amazon.com, our users, or others.³¹

And if a digital book service does disclose records about its customers, the readers may never know. For example, Amazon’s privacy policy explicitly exempts most disclosure situations from its promise to provide notice to users if their information is shared.³² Google has consistently refused to disclose how many government requests for information it receives.³³ Without this information, users are unable to determine whether these services are adequately standing up for their privacy rights.

PART IV: NEXT STEPS TO PROTECT DIGITAL READER PRIVACY

Digital book services are growing rapidly, but the safeguards necessary to ensure the freedom to read are largely being left out of the story. The time is now for companies, policymakers, and public interest groups to work together to take important first steps to: (1) develop robust privacy policies that take into account the sensitivity of reading records; (2) aggressively defend reader privacy; and (3) update and develop new laws to ensure that reader privacy is safeguarded in the digital age.

COMPANIES SHOULD DEVELOP ROBUST DIGITAL BOOK PRIVACY POLICIES AND AGGRESSIVELY PROTECT THE RIGHTS OF READERS

Any digital book service should include at least the following four areas of basic reader protections:

- **READER TRANSPARENCY.** Readers should know what information is being collected and maintained about them and when and why reader information has been disclosed. Digital book service companies should develop robust privacy policies that take into account the sensitivity of book records information and publish annually the number and type of demands for reader information that are received.
- **PROTECTION AGAINST DISCLOSURE.** Readers should be able to use a digital book service without worrying that the government or a third party is reading over their shoulder. The digital book service should promise that it will protect reader records by responding only to search warrants properly issued to law enforcement and court orders obtained by private third parties. It also should promise that, whenever legally possible, it will tell readers if anyone demands access to information about them before that information is disclosed so the reader has the opportunity to fight disclosure. The digital book services also should promise not to reveal any unnecessary information about the use of its services to credit card processors or any other third parties.
- **LIMITED TRACKING.** Just as readers can anonymously browse books in a library or bookstore, they should have the ability to anonymously browse, search, and read books on a digital book service. Logging information for digital book services should not be kept for longer than necessary to complete a transaction, and never longer than 30 days without opt-in consent. In addition, digital book services should not link any information about a reader's use of the book service with any information about that reader's use of other online services without specific, informed consent.
- **USER CONTROL.** Readers should have complete control of their purchases and purchasing data. Readers must be able to review and delete their records and have extensive permission controls for their "bookshelves" or any other reading displays.

LAWMAKERS SHOULD UPDATE LEGAL PROTECTIONS TO ENSURE CLARITY REGARDING READER PRIVACY IN THE DIGITAL AGE

While there is strong judicial precedent protecting the privacy and free speech of readers, lawmakers should update legal protections to ensure clarity regarding reader privacy in the digital age. States around the country have long recognized the importance of protecting the privacy and confidentiality of reading records. Now that digital book service providers are in a position to collect vast amounts of information about the reading habits of individuals, state laws focused solely on libraries or bookstores should be expanded to address this new area and create clear statutory safeguards for digital reading records.

Federal book privacy law also should be explored. Congress has already recognized the privacy interests of users of expressive material by enacting privacy protections for video and cable viewing records. The Video Privacy Protection Act prohibits disclosure of video viewing records without a warrant or court order, requires notice prior to any disclosure of personally identifiable information to a law enforcement agency, and requires the destruction of personally identifiable information one year after it becomes unnecessary.³⁴ The Cable Communications Policy Act similarly prohibits disclosure of cable records absent a court order.³⁵ Book records should be similarly protected. A federal law would help to ensure uniformity and clear standards for companies, individuals, and third parties making information requests.

CONCLUSION

The United States has a long history of protecting reading privacy. As the popularity of digital book services grow, we must ensure that these protections extend to digital reading records. Forcing individuals to choose between digital books and keeping their reading interests private is not good for business or for the public good. With strong economic incentives for digital book providers to collect detailed information about reading habits and some book privacy laws outdated or incomplete, the time is now for businesses to pledge to build robust protections into digital book services and policymakers to update privacy law to safeguard the freedom to read.

For more information about digital books, please visit the ACLU of Northern California's online privacy website at www.dotrights.org.

ENDNOTES

¹ *United States v. Rumley*, 345 U.S. 41, 57 (1953) (Douglas, J., concurring).

² *Lamont v. Postmaster General*, 381 U.S. 301, 307 (1965).

³ ACLU OF NORTHERN CALIFORNIA, *Who Wants to Know What You're Reading?*, <http://www.aclunc.org/googlebooks/> (last visited Feb. 10, 2010).

⁴ *In re Grand Jury Subpoena to Kramer-books & Afterwords, Inc.*, 26 Med. L. Rep. 1599, 1601 (D.D.C. 1998).

⁵ *Tattered Cover v. City of Thornton*, 44 P.3d 1044, 1059 (Colo. 2002).

⁶ *In re Grand Jury Subpoena to Amazon.com*, 246 F.R.D. 570, 573 (W.D. Wis. 2007).

⁷ See for example section 4509 of the New York Civil Practice Law and Rules and sections 6267 and 6254(j) of the California Government Code. The two states that do not have library confidentiality laws are Hawaii and Kentucky. However, the Attorney General's Office in each state have issued opinions in support of reader privacy. Haw. OIP Opinion Letter No. 90-30 (1990); Ky. OAG 82-149 (1982).

⁸ For example, Arizona (Ariz. Rev. Stat. § 41-1354(C) (2008)) Arkansas (Ark. Code. Ann. § 13-2-702), the District of Columbia (D.C. Code § 39-108(d)), Florida (Fla. Stat. Ann. § 257.261(4)) and Montana (Mont. Code Ann. § 22-1-1111) all make such a violation criminal.

⁹ R.I. Gen. Laws § 11-18-32 (2009); Mich. Comp. Laws Ann. § 445.1712 (2009).

¹⁰ AM. LIBRARY ASS'N, *American Library Association Policy Manual: Intellectual Freedom*, available at <http://www.ala.org/ala/aboutala/governance/policymanual/index.cfm> (last visited Feb. 10, 2010).

¹¹ AM. LIBRARY ASS'N, *Code of Ethics of the American Library Association*, available at <http://www.ala.org/ala/aboutala/offices/oif/statementspols/codeofethics/Code of Ethics of th.pdf> (last visited Dec. 29, 2009).

¹² On Amazon.com.com, 35 percent of sales of books that have a Kindle edition are sold in that format. Saul Hansell, *The Kindle Lets Amazon.com Make a Lot From the Few*, NEW YORK TIMES BITS BLOG, Mar. 6, 2009, available at <http://bits.blogs.nytimes.com/2009/05/06/how-the-kindle-let-amazon-make-a-lot-from-the-few/>. Four million e-readers were sold worldwide in 2009, with the number expected to grow to 12 million in 2010, 18 million in 2012. Juliet Ye, *Outlook for electronic books in China appears bright- once big hurdles are cleared*, WALL ST. JOURNAL, Jan. 5, 2010, available at <http://online.wsj.com/article/SB10001424052748704350304574637950431792192.html>.

¹³ *The Authors Guild, Inc. et al. v. Google, Inc.*, Case No. 05 CV 8136. (S.D.N.Y. 2009). More information available at www.aclunc.org/googlebooks.

¹⁴ Google Books Privacy Policy, Sept. 3, 2009, <http://books.google.com/googlebooks/privacy.html> (last visited Dec. 29, 2009).

¹⁵ Motoko Rich, *Google Hopes to Open Trove of Little-Seen Books*, N.Y. TIMES, Jan. 4, 2009, at B1, available at <http://www.nytimes.com/2009/01/05/technology/internet/05google.html>.

¹⁶ Google Privacy Policy, Mar. 11, 2009, <http://www.google.com/privacypolicy.html> (last visited Dec. 29, 2009).

¹⁷ Amazon.com Kindle: License Agreement and Terms of Use, <http://www.amazon.com/gp/help/customer/display.html?nodeId=200144530> (last visited Dec. 29, 2009).

¹⁸ Brad Stone, *Amazon Erases Orwell Books From Kindle*, N.Y. TIMES, July 17, 2009, at B1, available at <http://www.nytimes.com/2009/07/18/technology/companies/18amazon.html>.

¹⁹ See Google Privacy Policy, *supra* note

²⁰ Amazon.com Privacy Notice, Oct. 1, 2008, <http://www.amazon.com/gp/help/customer/display.html?nodeId=468496> (last visited Mar. 11, 2010).

²¹ Federal Trade Commission, Transcript of Panel 3, Exploring Privacy: An FTC Roundtable Discussion, http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/120709_sess2.pdf.

²² Maureen Dowd, *Dinosaur at the Gate*, N.Y. TIMES, Apr. 14, 2009, at A27, available at <http://www.nytimes.com/2009/04/15/opinion/15dowd.html>.

²³ Caroline Daniel and Maija Palmer, *Google's Goal: To Organise Your Daily Life*, FINANCIAL TIMES, May 22, 2007, available at <http://www.ft.com/cms/s/2/c3e49548-088e-11dc-b11e-000b5df10621.html>.

²⁴ In 2007, the *New York Times* estimated that Google had already spent more than five million dollars. Katie Hafner, *History, Digitized (and Abridged)*, NEW YORK TIMES, Mar. 10, 2007, available at <http://www.nytimes.com/2007/03/10/business/yourmoney/11archive.html>.

²⁵ Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, Vol. 2, 964 (1953), (testimony of Jerre G. Mangione and Mary Colombo Palmiero).

²⁶ See Eric Lichtblau, *F.B.I., Using Patriot Act, Demands Library's Records*, N.Y. TIMES, Aug 26, 2005, available at <http://www.nytimes.com/2005/08/26/politics/26patriot.html>. The actual number is not known due to PATRIOT Act "gag order" provisions that were found unconstitutional in *Doe v. Gonzales*, 500 F. Supp. 2d 379 (S.D.N.Y. 2007).

²⁷ *In re Grand Jury Subpoena to Kramer-books & Afterwords, Inc.*, 26 Med. L. Rep. 1599, 1601 (D.D.C. 1998).

²⁸ Joseph Turow, et al., *Americans Reject Tailored Advertising* (2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1478214.

²⁹ *Id.*

³⁰ See Google Privacy Policy, *supra* note

³¹ See Amazon.com Privacy Notice, *supra* note

³² *Id.*

³³ David Kravets, *Google Talks Transparency, But Hides Surveillance Stats*, WIRED.COM THREAT LEVEL BLOG, Dec. 17, 2009, <http://www.wired.com/threatlevel/2009/12/google-talks-out-its-portal/>.



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