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CENTER FOR DEMOCRACY  
& TECHNOLOGY

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Washington, DC 20006

April 6, 2011

The Honorable Leland Yee  
State Capitol, Room 4074  
Sacramento, CA 95814  
Fax: 916.327-2186

**Re: Support for SB 602, The Reader Privacy Act**

Dear Senator Yee:

The Center for Democracy & Technology (CDT) is writing to support passage of The Reader Privacy Act, SB 602, to extend the strong privacy and free speech standards in California law to the access of books in the online context. With offices in Washington, DC, and San Francisco, CDT is a leading proponent of ensuring privacy laws and norms keep pace with developments in technology and the evolving ways in which people access information, and SB 602 is a much needed update.

Traditionally, readers in the United States have enjoyed a high level of anonymity and privacy with respect to their reading habits, as one element of their broader – and constitutionally-based – interest in privacy of their personal information. The First Amendment protects the right to receive information anonymously, and true to that value, libraries have a longstanding commitment to intellectual freedom and patron privacy. The American Library Association *Code of Ethics* states: “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.”

As part of a broader effort to ensure this tradition continues as libraries and bookstores move online, CDT urged the court considering the settlement in the lawsuit over Google Books – which would have greatly expanded the Google Books service – to enact strong privacy safeguards in an order approving the settlement. While that settlement was not ultimately approved, the judge did note in the decision that “the privacy concerns are real.” Nonetheless, the trend toward electronic books and online book services continues, and legislative action is necessary to ensure that readers’ privacy is protected.



As Californians increasingly turn to electronic access, it is essential to safeguard readers' browsing, buying, and viewing information as such details reveal private information about political and religious beliefs, health concerns, and personal lives. Digital books are now outselling paperbacks on Amazon.com, readers are turning to online services like Google Books, and analysts expect that over 18-million e-readers will be sold in 2012. These services offer tremendous benefits to consumers by offering new and flexible ways to purchase and read an expanding catalog of books, including many that would otherwise be out of print. But offering electronic access enables and in some cases requires extensive data-collection on what and how people read. With increased data-collection comes increased privacy risk. Users may shy away from exploring important yet controversial topics, or resist new services altogether, for fear of how such data could be used. And as companies collect more detailed reader information – including books browsed, how long pages are viewed, with whom books are shared, and even the notes written in the margins – reading records are becoming a larger target for government surveillance. It is imperative, therefore, that the thresholds for third-party disclosure are adequate to ensure user privacy and due process.

The Reader Privacy Act would ensure that government and other third parties cannot access private reading records without proper justification. The bill generally allows compelled disclosure of personal information related to reading records only when a government entity or private party obtains a warrant or court order upon a showing of a compelling interest, and the warrant or order is the least intrusive means to obtain the information desired. (The bill does appropriately permit disclosure when an individual consents, or when there are exigent circumstances.) This heightened standard is consistent with constitutional principles and is similar to the standard put forward by CDT in our recommendations for Google Books. In addition, SB 602 requires that book sellers and providers receive notice and the opportunity to contest the order. In civil cases, the reader would have the notice and opportunity to contest; in criminal cases, the reader would not be given advance notice. These procedural protections will allow readers the reasonable ability to protect their privacy. Lastly, the transparency provided by the yearly reports from providers as to the number and results of government and third-party requests for data will increase user confidence in the privacy of their information and provide an important check against abuse.

The Reader Privacy Act would establish clear rules for businesses, and clear standards for government and third-party access to reader records. Under SB 602, consumers will be able to feel comfortable using new digital book services and technology without worrying that their personal information will be unprotected. California should promote the use of new technology by ensuring that upgraded technology does not mean downgraded privacy.

Sincerely,

/s/

Gregory T. Nojeim

Senior Counsel and Director of CDT's Project on Freedom, Security, and Technology