

ACLU sues over cell-phone search

*Student's privacy
violated, group says*

Maya T. Prabhu
Assistant Editor

The American Civil Liberties Union (ACLU) has filed a federal civil-rights lawsuit on behalf of a middle-school boy who was expelled from school after what the group calls an illegal search and seizure of his cell phone. The case could help decide whether school officials have the right to examine a student's cell phone or other personal technology device without probable cause.

Richard Wade, who was a 12-year-old student at Southaven Middle School in the DeSoto County School District in Mississippi, had his phone confiscated last August by several of his football coaches, his class principal, and a Southaven Police Department sergeant after he read a text message during football class, which was a violation of school rules.

According to the ACLU, after receiving a text message from his father in South Carolina, which he thought might indicate an emergency, Wade flipped open his phone to read the message. Rather than simply confiscate the phone and turn it in to the school office as required by Southaven Middle School policy, several school officials reportedly searched through the phone and found cell-phone photographs of what they described as "gang-related activity."

The phone was then turned over to police, and Wade was suspended for three days. At a disciplinary hearing the next week, it was argued that Wade posed a threat to school safety, and police argued that they recognized gang signs in the photos stored in Wade's phone. He was then expelled from the school.

Court records filed by Wade, his mother, and the ACLU state that the photos in Wade's phone were of him dancing in the bathroom of his home and of a classmate holding a BB gun across his chest.

"This is a case where an honor student was expelled from school because a police officer and school officials decided without any basis that innocent pictures of a kid dancing conveyed 'gang-related' messages," said Reginald T. Shuford, senior staff attorney with the ACLU Racial Justice Program. "School officials and the police officer involved never point-

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President Barack Obama urged students to work hard and stay in school in a Sept. 8 speech that was shown on TV and via the internet to schools nationwide—despite concerns from some parents. **See story, page 29.**

Teacher quality under the microscope

Schools grapple with how to measure value

Meris Stansbury
Associate Editor

It's no secret that one of the keys to better schools is to raise the quality of teaching in the nation's classrooms. But how to identify, and encourage, high-quality teaching is proving to be a challenge.

Several efforts to address this question are under way. The Bill & Melinda Gates Foundation has just launched a five-year, \$500 million initiative to quantify what, exactly, makes a teacher effective and how to tie that to student achievement. And the Obama administration has cited improving teacher quality as one of four education-reform areas it plans to target in particular.

Education Secretary Arne Duncan has said he supports merit pay for teachers—a practice linking raises or bonuses to student achievement. He also said test scores alone should not decide a teacher's salary. "...but to somehow suggest we should not link student achievement to teacher effectiveness is like suggesting we judge sports teams without looking at the box score."

Duncan also is using federal stimulus dollars to press the issue.

Later this year, states will compete for a piece of \$4.3 billion in "Race to the Top" stimulus funding, which rewards those states and school systems that adopt innovations the Obama administration supports. Whether officials tie student data to teacher evaluations will be a consideration in awarding the grants, said Duncan.

Although relatively rare, the use of pay-for-performance programs appears to be

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Google wants to be world's librarian

*Historic book-search
ruling coming soon*

From staff and wire reports

Should internet search giant Google Inc. control access to millions of copyrighted and out-of-print books for the world's scholars, researchers, and casual readers alike? That's the fundamental issue that U.S. District Judge Denny Chin must answer soon as he mulls whether to approve a landmark deal that would let Google scan millions of copyrighted books so they can be read on computers and other electronic devices.

The agreement that Google reached with the Authors Guild and the Association of American Publishers last October ended a three-year legal challenge of Google's plan to make many of the world's books searchable via the internet. In a class-action lawsuit, the two groups charged that Google's efforts to scan books without permission from the copyright holders infringed on copyright protections.

Under the proposed settlement, Google would pay \$125 million to resolve copyright claims by authors and publishers and to pay legal fees. Authors and publishers would have new opportunities to make money from the sale of out-of-print books online, and public and academic libraries would be able to expand their reach by offering full-text views of books in many cases.

The deal is subject to approval by Chin, who was scheduled to hear oral arguments in an Oct. 7 hearing in New York as of press time. First, however, Chin must sift through stacks of conflicting briefs about Google's book settlement.

Depending on one's perspective, the landmark book-search deal represents either a literary cartel that would lead to higher prices and less competition—or a breakthrough that would make millions of hard-to-find books available to anyone online.

Interested parties had until Sept. 8 to submit written comments about the deal, and a

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flurry of legal briefs were filed before the deadline. Among the settlement's harshest critics were three of Google's chief business rivals—Microsoft Corp., Yahoo Inc., and internet bookseller Amazon.com Inc.—who have joined a coalition called the Open Book Alliance in hopes of blocking the deal. Coming to Google's defense, meanwhile, were Sony Electronics, several economics professors, and groups that advocate for the disabled, among others.

The settlement has raised the specter of Google becoming even more powerful than it already has become as the owner of the internet's most popular search engine and most lucrative advertising network.

Those concerns represented the crux of a 32-page brief written by Silicon Valley attorney Gary Reback, who helped the Justice Department pursue an antitrust case against Microsoft's bundling of personal computer software in the 1990s.

Reback filed the brief Sept. 8 on behalf of the Open Book Alliance, which includes Microsoft, Yahoo, and Amazon.com—all of whom also filed their own separate briefs. The Open Book Alliance is led by the Internet Archive, a longtime critic of Google's crusade to make digital copies of as many printed books as possible.

The alliance contends that Google has conspired with the author and publishing groups that sued the Mountain View, Calif.-based company, to make it more difficult for competitors to create similar indexes of digital books. The alliance argues that competitive barriers would empower Google, authors, and publishers to raise prices of digital books well above the current standard of about \$10 per volume.

"The publishing industry desperately

wants to raise the retail price point for digital books," Reback wrote for the alliance. "The book settlement permits them to achieve that by working with Google."

Google would give 63 percent of its digital book sales to the participating authors and publishers. The settlement covers books under U.S. copyright through Jan. 5, 2009, unless the copyright owners decline to join the agreement.

To preserve competition, Reback argued that Google should be required to license its digital book database to several rivals under the U.S. Justice Department's supervision. The Justice Department is conducting its own antitrust investigation into the proposed book-search settlement.

Backers of the book deal—including 32 professors specializing in antitrust and economics law—contend these antitrust concerns are unfounded.

The Computer Communications Industry Association, a trade association critical of Microsoft during its antitrust case in the 1990s, argued that Google's non-exclusive agreement won't prevent other merchants from selling electronic books—if they can spend an estimated \$100 million to enter the book-scanning market.

If anything, lawyers for Sony's electronics division argued, the increased supply of books available through Google's digital library would foster more innovation and lower prices for electronic readers, including Sony's own eReaders.

As more people buy readers, more companies would have an incentive to sell digital books, Sony reasoned, noting that DVD players that once cost more than \$1,000 now sell for as little as \$50.

The misgivings about Google's settlement extend beyond its potential effects on the digital book market.

Microsoft and Yahoo, in particular, are worried that Google's expanded index of digital books would cause even more people to use its search engine, which already fields nearly two-thirds of U.S. search requests.

Getting more data about users' preferences could help Google further improve its search engine and make competing even tougher for Microsoft and Yahoo, the companies warned. Redmond, Wash.-based Microsoft and Sunnyvale, Calif.-based Yahoo recently agreed to a 10-year partnership partly to have a larger set of data to improve their web-search services.

Google also might gain insights into the books that people are reading, something that prompted to a group of authors and publisher represented by the American Civil Liberties Union and the Electronic Frontier Foundation to object to the settlement.

Hoping to ease privacy concerns, Google has drawn up a separate policy governing the information it gets from book searches and sales.

Google posted an initial draft of its privacy policy for books on Sept. 3. The policy states that all of the provisions of Google's general privacy policy apply to the Google Books service. Among other things, this means:

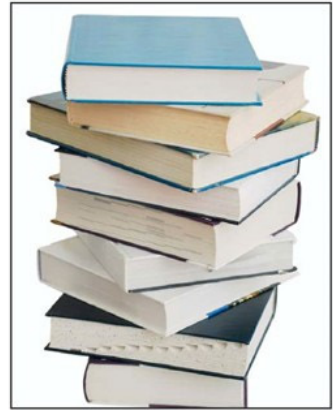
- Google will not share personal information with third parties, except in the narrow circumstances described in the Privacy Policy, such as emergencies or in response to a valid legal process.
- When someone uses Google Books, Google receives log information similar to what it receives from internet searches. This includes the query term or page request, IP address, browser type, browser language, the date and time of the request, and one or more cookies that might uniquely identify the user's browser.
- Google says it will use this information for the purposes discussed in its Privacy Policy, such as to improve its services and report on aggregate user trends. Usage data from Google Books are subject to the same security standards outlined in Google's main Privacy Policy, the company says.

Google also has made a series of concessions to address concerns by the settlement's critics in Europe. Among other things, the company is adding two foreign representatives to the board overseeing its digital book rights. The governments of both Germany and France have filed objections to the U.S. book settlement.

More than 10 million books already have been scanned into Google's electronic index since 2004. The settlement would clear the legal hurdles that have been preventing Google from stockpiling millions of copyrighted books that are out of print. Because those books are scattered in the different libraries across the nation, they're inaccessible to most people.

The concept of having a library accessible around the clock from anywhere with an internet connection has attracted plenty of supporters, especially among librarians and researchers.

Google argues that the settlement will be a boon for consumers, who will have easier access to potentially valuable information now gathering dust in remote library shelves. And, Google says, authors



Educators are watching the Google Book Search skirmish with great interest.

and publishers will be able to make more money from out-of-print books.

"The Google Books settlement is injecting more competition into the digital books space, so it's understandable why our competitors might fight hard to prevent more competition," Google spokesman Gabriel Stricker said. "That said, it's ironic that some of these complaints are coming from a company that abandoned its book digitization effort because it lacked 'commercial intent.'"

Stricker was taking a stab at Microsoft, which abandoned its efforts to make digital copies of books so it could focus on more profitable online opportunities.

While much of the discussion about the proposed settlement has revolved around its effects on competition, a coalition of civil-rights and disability groups in favor of Google's book-scanning project held a press conference on Sept. 3 to rally support for the deal, which they say could help bridge the "information divide" by giving anyone with an internet connection access to knowledge previously stored only in libraries at expensive universities or rich communities.

Several organizations stand to make huge gains if the settlement is approved, the coalition argued. Blind people, for example, have access to a special library run by the Library of Congress that converts print books into formats readable by the visually impaired, but that library—which has existed since 1931—only has 70,000 texts, said Chris Danielsen, director of public relations for the National Federation of the Blind.

If the book-scanning settlement is approved, it will give print-disabled people "access to more books than we have ever had in human history," Danielsen said.

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ed to anything that would suggest that pictures of Richard dancing were linked to a gang in any way. From the day he had his phone confiscated until the day the county school board expelled him, school and police officials showed a callous disregard for Richard's rights."

DeSoto County spokeswoman Katherine Nelson said the district could not comment on the litigation, although Superintendent Milton Kuykendall said: "I can tell you that I do not plan to allow the ACLU to destroy discipline and allow gangs to run the schools."

After Wade was expelled from school, Nelson provided a statement to media outlets that outlined the board policy against student use of cell phones during school hours, which are from 7 a.m. to 4 p.m., according to reports in the *Memphis Commercial Appeal*. Southaven, located in the northwest corner of Mississippi, is part of the Memphis metropolitan area.

"Students know that if they break the rules, their cell phone will be confiscated and that school officials reserve the right to look through the cell phone to see if they were cheating on a test or conducting ille-

gal activities related to gangs or drugs," the statement said. According to court documents, students and parents were not aware of this policy.

Wade and the ACLU argue that the school district not only violated the student's privacy and right to be free from unreasonable search and seizure, but also did not follow school policy concerning a violation of the rule against possession of electronic devices during school. They are suing under the First, Fourth, and Fourteenth Amendments.

"The rights of students to be free from unreasonable search and seizure and to due process are not suspended when they walk through the schoolhouse door," said Kristy Bennett, staff attorney with the ACLU of Mississippi.

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