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October 8, 2002

By Facsimile

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RE: Amazon.com, Inc.

Dear Mr. Catlett and Mr. Hoofnagle:

Thank you for the letter you delivered to us today concerning the recent changes that Amazon.com, Inc. made to its privacy policy as a result of input from the Massachusetts Office of the Attorney General, and of the Offices of sixteen other Attorneys General which you copied on your letter. We appreciate your taking the time to take note of our efforts.

We wanted to take a moment to address three areas of concern that you raise: (1) your general concern that booksellers should be prohibited from releasing information concerning book purchasers and book browsers, (2) your recommendation that Amazon permit its customers to (a) have access to all of their Amazon records, and (b) have the option to delete records, and (3) your suggestion that Amazon be required to submit to an outside, independent audit. We note that we have provided a copy of your letter to Amazon, and are interested in receiving Amazon's reply to the concerns you raise.

I. Bookstores Should Not Reveal Information About Its Customers

Like you, we agree that information concerning books that customers purchase is private

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information, and should not be shared with others. We are mindful, as you point out, that online booksellers have more sensitive information about its customers than "bricks and mortar" bookstores do, since online booksellers may have information concerning those books that customers may have explored but did not purchase. (Of course, a sophisticated customer may configure his or her browser to reject cookies, and may thereby anonymously browse books at Amazon's site, but we recognize that many customers will not do this or will not know to do this.)<sup>3</sup>

Like you, we were disturbed when Amazon announced a change to its privacy policy two years ago which seemed to contemplate that Amazon considered customer information a business asset which it could transfer at any time. One of our chief concerns was that Amazon might sell customer list information as a stand-alone asset to marketers, and that consumers would be marketed based on their purchasing and browsing practices. But when we brought our concerns to Amazon, we received Amazon's assurances that not only was this practice, or any similar practice, *not* taking place, this was never Amazon's plan and the practice would *never* take place. Amazon's interest was only that, in the event that a retailing unit of Amazon were transferred to a new business, the customer information would also be transferred to that new business and would still be subject to the Amazon privacy policy in effect at the time the information was collected.<sup>4</sup>

Amazon was very responsive to our suggestion that its privacy policy be written to better reflect its actual practices, and now the privacy policy makes it plain that customer information is

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<sup>3</sup> We are also aware of the recent decision of the Colorado Supreme Court, Tattered Cover, Inc. v. City of Thornton, 44 P.3d 1044 (April 8, 2002). In that case, Colorado's highest court found that a city had failed to demonstrate that its need for a search warrant directed to the Tattered Cover, Inc., a bookstore in Denver, in order to determine what specific books had been purchased by a criminal suspect, was sufficiently compelling to outweigh the First Amendment interests of the book purchaser given the facts before the Court. That case raised far narrower issues than those raised here, and, in fact, we understand that Amazon, like the Tattered Cover, would also not release records if similarly subpoenaed, although this area was not the subject of our concerns with Amazon.

<sup>4</sup> We understand that you read the new privacy policy to permit Amazon to transfer its customer list information to anyone at the time of a transfer of a business unit, but we do not read the new policy that way. We believe that Amazon may only transfer customer information to the business entity to which Amazon is transferring its business unit, and would consider any conduct to the contrary to be inconsistent with Amazon's privacy policy and with the letter Amazon sent to us concerning the changes it made to the policy.

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*not* a stand-alone asset that could be transferred at Amazon's option. Amazon has only reserved the right to transfer all of its customer information along with its other assets if its business is sold or transferred. And even if such transfer occurs, all of the transferred customer information remains subject to the same privacy standards of Amazon. Thus, even if Amazon sells its bookstore, for example, to another bookstore, the acquiring bookstore may not sell customer information as a stand-alone asset.<sup>5</sup>

### 2. The Right Of Customers To Have Access To Amazon Records, And To Delete Any Or All Of Those Records

In your letter, you point out that Amazon complies with standards of the European Union on its sites which operate in the United Kingdom and Germany, which include the requirements that customers be given access to their online customer records, and the ability to change and delete those records.<sup>6</sup> You recommend that the State Attorneys General require Amazon to make these options available in the United States.

We agree with you that these are very valuable tools for consumers, and that these tools may greatly enhance the ability of consumers to protect their privacy. However, we are not convinced that *not* making these tools available to consumers necessarily constitutes an unfair or deceptive practice under state law, under the circumstances here. Nevertheless, we are interested in learning from Amazon its response to your suggestions.

### 3. Independent Audit

Because we thought Amazon provided an adequate response to the concerns we raised (not all of which are described in your letter or in this response), we did not see it necessary to request that Amazon submit itself to the review of an independent auditor who would determine Amazon's compliance with its privacy policy. Nevertheless, we are passing along your

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<sup>5</sup> We were also aware, as you point out, that Amazon had provided customers under its previous privacy policy with the right to "opt-out" of then unplanned, future information sharing. We understand that Amazon has maintained a record of these customers, and plans to offer these customers an "opt-in" right if Amazon's bookstore is transferred, which means that the information of these customers will not be transferred along with other business unit assets if these customers do not provide prior, affirmative consent. Indeed, in response to the States' concerns, Amazon clarified its privacy policy to state that it will never be made "less protective of customer information collected in the past without the consent of affected consumers."

<sup>6</sup> See Articles 10, 11 and 12 of the European Community Directive on Data Protection, October 24, 1995.

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suggestion to Amazon, and we are interested in learning Amazon's willingness to voluntarily submit to such a review.

In sum, we appreciate your attention to the privacy issues we took up with Amazon, and appreciate your taking the time to write to us. If we can answer any questions or concerns you may have, feel free to contact us.

Very truly yours,



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