

# JUDGE AFFIRMS PRIVACY RIGHTS OF AMAZON.COM CUSTOMERS

by the Privacy Times

A federal judge in Seattle has ruled that the First Amendment protects consumers from the government demanding to know the books, music and audiovisual products they've bought.

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Rejecting the State of North Carolina's demand for Amazon.com's customer records, U.S. District Judge Marsha Pechman wrote, "The First Amendment protects a buyer from having the expressive content of her purchase of books, music, and audiovisual materials disclosed to the government. Citizens are entitled to receive information and ideas through books, films, and other expressive materials anonymously."

"In the context of distribution of handbills, the Supreme Court held that anonymity exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular," she wrote.

North Carolina requires residents to pay taxes on online purchases if buying the same item in a physical store would result in a sales tax. But out-of-State retailers can't be forced to collect North Carolina's tax if they have no physical presence in the State. The dispute is over the State's definition of whether Amazon had a North Carolina presence.

Last year, State legislators passed a law making Amazon responsible for collecting sales taxes because it had a network of local affiliates "North Carolina residents who linked to products on their blogs, promoted Web shopping deals and offered coupons.

Before the change was adopted, Amazon cut its ties to those North Carolina affiliates. The company also stopped working with affiliates in Rhode Island and Colorado because of collection-enforcement laws passed in those States.

North Carolina's tax agency decided to pursue Amazon for taxes it argues should have been collected during the years those affiliates were operating, even before the new law was passed. Lawyers for the tax agency said either Amazon or its customers owe North Carolina \$50 million in sales and use taxes on Internet purchases.

But Judge Pechman wrote, "The fear of government tracking and censoring one's reading, listening, and viewing choice chills the exercise of First Amendment rights. In a concurring opinion, Justice Douglas highlighted the deleterious effect of governmental meddling in the reading habits of its citizens: "Some will fear to read what is unpopular what the powers that be dislike. When the light of publicity may reach any student, any teacher, inquiry will be discouraged."

“While the DOR states that it could not possibly match the names to the purchases, its promise of forbearance is insufficient to moot the First Amendment issue. The Court finds the disclosure of the identities and detailed information as to the expressive content of Amazon’s customers’ purchases will have a chilling effect that implicates the First Amendment,” she continued.

“Given that the DOR’s request implicates the First Amendment, the DOR must show a compelling governmental interest warrants the burden, and that less restrictive means to achieve the government’s ends are not available. There must also be a substantial relation between the information sought and a subject of overriding and compelling state interest. The DOR concedes that it has no legitimate need or use for having details as to North Carolina Amazon customers’ literary, music, and film purchases.”

“In spite of this, the DOR refuses to give up the detailed information about Amazon’s customers’ purchases, while at the same time requesting the identities of the customers and, arguably, detailed records of their purchases, including the expressive content. With no compelling need for both sets of information, the DOR’s request runs afoul of the First Amendment. It bears noting, too, that the DOR’s requests for information were made solely in the context of calculating Amazon’s potential tax liability. Amazon has provided all of the data necessary to determine its tax liability, except any potential tax exemptions. The DOR has failed to articulate the compelling need to calculate these possible exemptions, particularly where it has admitted that it can and will assess Amazon at the highest rate and it would permit Amazon to challenge the assessment and . . . establish that exemptions or lower tax rates applied to some products.”

N.C. Revenue Department spokeswoman Beth Stevenson told The Associated Press that attorneys were reviewing the ruling and no decision has been made on whether to appeal the judge’s ruling. The agency neither wants nor needs titles or similar details of products purchased by Amazon customers.

“This case has been twisted into something it is not,” Stevenson said in a statement. The agency “wants to collect the tax that is due to the State and nothing more.”