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E-RATE AND FILTERING: A REVIEW OF THE CHILDREN'S INTERNET PROTECTION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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E-RATE AND FILTERING: A REVIEW OF THE CHILDREN'S INTERNET PROTECTION ACT

WEDNESDAY, APRIL 4, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2322, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Stearns, Largent, Shimkus, Pickering, Blunt, Terry, Markey, Green, McCarthy, Luther, Harman, and Sawyer.

Staff present: Mike O'Rielly, majority professional staff; Brendan Kelsay, minority counsel; and Yong Choe, legislative clerk.

Mr. UPTON. All right. We will start. Good morning. The subcommittee will now come to order. Today's hearing is on the Children's Internet Protection Act, otherwise known as "CIPA" or "CHIPA."

On April 20, CHIPA is to be implemented by the FCC, and there have been several recent lawsuits filed in Federal Court challenging the constitutionality of the law, and seeking to block its implementation as it pertains to public libraries.

I support the goal of CHIPA. In my view, the taxpayers should not be required to fund obscenity or child pornography, or any means of accessing it. Nobody should be able to use publicly funded library computers to access obscene pictures or child pornography.

And libraries should be responsible for protecting children from this material and other material which is harmful to them, period. Under CHIPA, E-rate funding to public libraries and schools will be conditioned upon their deployment of technology, which will prevent children from accessing visual depictions that are obscene, child pornography, or other visual depictions that are otherwise harmful to minors.

Libraries and schools which do not comply will lose their E-rate funding. Moreover, CHIPA requires schools and libraries which receive E-rate funding to adopt and implement broad Internet safety policies, which should address access by minors to inappropriate matter on the Internet.

The safety and security of minors when using E-mail and chap rooms, hacking by minors, unauthorized disclosure of personal and identifying information regarding minors, and measures designed to restrict minors' access to material that is harmful to them.

As the parent of two young kids who use the Internet, I know well the wonderful educational opportunities which the Internet brings to them. However, I also know the fear that all parents have about their kids being unwittingly exposed to smut on the Internet, particularly when parents may not be around, like at the library and at the school.

Primarily at issue in today's hearing is the use of the Internet in public libraries. Our public libraries are among our communities most valuable assets. Unlike movie theaters and video arcades, public libraries are supposed to be where parents can send their kids to learn in an environment where they have access to only safe and appropriate materials.

By and large I believe that our Nation's libraries take very seriously their responsibilities to protect kids. For example, I recently visited the Kalamazoo Public Library in my district, and I know that they have a terrific computer facility, complete with Internet access.

Through a system of user identification cards, acceptable use rules, and computer screens which are all in one place, where they can be seen by an effective monitoring staff, there are very few incidents of inappropriate material being accessed by library users.

Those limited few who break the rules get caught and get their privileges yanked. The system as I have watched it, I know is working well in Kalamazoo. Nevertheless, CHIPA is the law, and the practical question is whether filtering and blocking technologies are able to provide an optimal level of protection for all of our Nation's public libraries, particularly where library systems and staff monitors are not as effective as they certainly are in Kalamazoo.

Among others, the ACLU and the American Library Association have filed suit in Federal Court challenging the constitutionality of the law as it pertains to libraries. I am not a lawyer and so I won't venture a guess as to how the court might come down.

However, as a parent, and a taxpayer, and a believer in public libraries, and a supporter of the E-rate system which helps them provide computers and Internet access to those who might not otherwise have it, I believe we need to better understand the legal and practical arguments on both sides of the litigation, not to mention the promises and shortcomings that filtering and blocking technologies represent at this time.

I look forward to hearing from today's panel of witnesses. I appreciate their willingness to help us to get to the bottom of the matter, and I appreciate them being on time. I would note that we have a number of subcommittees that are also meeting on this day at this time, and I would ask for unanimous consent that all Member's statements be included as part of the record in their entirety.

[The prepared statement of Hon. Fred Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON, CHAIRMAN, SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

Good morning. Today's hearing is on the Children's Internet Protection Act, otherwise known as CHIPA. On April 20, CHIPA is to be implemented by the FCC, but there have been several recent lawsuits filed in federal court challenging the constitutionality of the law and seeking to block its implementation as it pertains to public libraries.

I support the goal of CHIPA. In my view, the taxpayers should not be required to fund obscenity or child pornography or any means of accessing it; nobody should

be able to use publicly funded library computers to access obscene pictures or child pornography; and libraries should be responsible for protecting children from this material and other material which is harmful to them. Period.

Under CHIPA, e-rate funding to public libraries and schools will be conditioned upon their deployment of technology which will prevent children from accessing visual depictions that are obscene, child pornography, or visual depictions that are otherwise harmful to minors. Libraries and schools which do not comply will lose their e-rate funding. Moreover, CHIPA requires schools and libraries which receive e-rate funding to adopt and implement broad Internet safety policies, which should address access by minors to inappropriate matter on the Internet; the safety and security of minors when using e-mail and chat rooms; hacking by minors; unauthorized disclosure of personal identifying information regarding minors; and measure designed to restrict minors' access to materials harmful to them.

As the parent of two young children who use the Internet, I know well the wonderful educational opportunities which the Internet brings to our kids. However, I also know the fear that all parents have about their kids being unwittingly exposed to smut on the Internet—particularly where parents might not be around, like at the library and at school.

Primarily at issue in today's hearing is the use of the Internet in public libraries. Our public libraries are among our communities' most valuable assets. Unlike movie theaters and video arcades, public libraries are supposed to be where parents can send their kids to learn in an environment where they have access to only safe and appropriate materials.

By and large, I believe that our nation's libraries take very seriously their responsibilities to protect kids. For example, take the Kalamazoo Public Library in my district. I recently visited and found that they have a terrific computer facility, complete with Internet access. Through a system of user identification cards, acceptable use rules, and computer screens which are all in one place where they can be seen by an effective monitoring staff, there are extremely few incidents of inappropriate material being accessed by library users. Those limited few who break the rules get caught and get their privileges yanked. This system appears to be working well in Kalamazoo.

Nevertheless, CHIPA is the law, and the practical question is whether filtering and blocking technologies are able to provide an optimal level of protection for all of our nation's public libraries, particularly where library systems and staff monitors are not as effective as they appear to be in places like Kalamazoo.

Among others, the ACLU and the American Library Association have filed suit in federal court, challenging the constitutionality of the law as it pertains to libraries. I am not a lawyer, so I won't venture a guess as to how the court might come down. However, as a parent, a believer in public libraries, and a supporter of the e-rate system which helps them provide computers and Internet access to those who might not otherwise have it—I believe we need to better understand the legal and practical arguments on both sides of the litigation, not to mention what promises and shortcomings filtering and blocking technologies represent at this time.

I look forward to hearing from today's witnesses, and I appreciate their willingness to help us get to the bottom of this matter.

Mr. UPTON. Without objection, I represent my friend and colleague from California, Ms. Harman, for an opening statement.

Ms. HARMAN. Thank you, Mr. Chairman. I am proud to be on time, and I am also pleased that you are having this hearing, because I think that this is a difficult and important subject for us to address. I should tell the panel and this Subcommittee that several Congresses ago I voted for the V-Chip.

I voted for the V-Chip because as a parent of four children myself, an overworked parent of four children myself—and that probably applies to most of the people about to testify, and to you, too, Mr. Chairman—I wanted to have technology that enabled me as a parent to make better choices for my minor children.

That's why I voted for the V-Chip, and I think that is the opportunity the V-Chip gives us. On the other hand, I did not serve in the last Congress, and so I believe I have never voted on CHIPA. I know that I didn't in the last Congress, but I don't think it came up in any other form before that.

I may be wrong, but at any rate, I would have had more doubts about CHIPA than I did about the V-Chip. I would doubt both its constitutionality and its wisdom. As for its contrast with the V-Chip, the V-Chip gives parents choice. CHIPA does not.

CHIPA mandates. It is a government mandate that librarians must do things or forego Federal funds. That is not giving parents choice. That is the government choosing. So in that sense, there is a contrast.

Second, in constitutional terms, I think as many are arguing about the Campaign Finance Reform Bill that there are serious issues when the government decides what expression will be permitted, and what expression won't be permitted. So I think there are constitutional issues there.

I would note further that it is not just the ACLU that is suing. As much respect as I have for the ACLU, and I do, it is also the American Library Association that is bringing suit here because I know that librarians—I have heard from many in my district—have serious concerns again about the government telling them how to handle minor access to pornographic materials in their libraries.

My conclusion, at least at the start of this hearing, is that there are serious constitutional issues here that government should be more careful, I believe, in striking the balance that we need to strike, and that my goal is to give parents choice about what their minor children view on the net, and in local parentis to give librarians who serve local communities choice about how to administer the Internet sites that our children are seeing in the public libraries.

So I approach this material in a dubious fashion. I am very interested to see what our witnesses say. I share your goal, Mr. Chairman, that we as parents, and that we as representatives of our districts, should do everything that we can to provide tools for responsible adults to help our children make wise choices.

But I am not sure that those tools should be mandated by government. Thank you very much. I yield back the balance of my time.

Mr. UPTON. Thank you. I would note that I was also a supporter of the V-Chip on the House floor several years ago, and the CHIPA amendment as I understand it, we never had a separate vote on that, either in Committee or on the House floor.

It was rolled in as part of the Labor-HHS Appropriation Bill and signed by President Clinton last year.

I recognize for an opening statement Mr. Blunt from Missouri.

Mr. BLUNT. Thank you, Mr. Chairman, and thank you for having this hearing. This is an issue, like you and Ms. Harman, that I feel that there are certainly some good points on both sides of this issue. We need to be sure that we don't either solve the wrong problem, or come up with the wrong solution, or create a bigger problem than we solve here.

But I think that is the reason that we have these hearings. This is not the final—for our witnesses, this is not the final committee action on a bill. This is truly having an opportunity to ask questions and get information a topic that we all have concerns on, and that we all want to see is solved in the right way.

And we respect the individuals here who have different points of view on the way that we need to address this as a Committee, and as a Congress, and I look forward to being part of the hearing, and reading the transcript on the hearing if I am not able to stay for all of it. So thank you, Mr. Chairman, for having this hearing today.

Mr. UPTON. Mr. Sawyer from Ohio.

Mr. SAWYER. Thank you, Mr. Chairman. I would associate myself with the comments of my colleagues. Thank you for having this hearing. We are on the threshold of a time when libraries and schools are changing their role in a way that we elevate the skill level of an entire Nation, and expose Americans to a breath in the world that is just breathtaking.

Making sure that we do that in a way that does not stand in the way of that access is enormously important, and with that, I will yield back the balance of my time, and look forward to the comments of our witnesses.

Mr. UPTON. Well, thank you. Our panel today includes Mr. Bruce Taylor, President and Chief Counsel of the National Law Center for Children and Families; Mr. Marvin Johnson, Legislative Counsel, of the American Civil Liberties Union, ACLU; Ms. Laura Morgan, a Librarian, from the Chicago Public Library; Ms. Carolyn Caywood, a Librarian from the Virginia Beach Public Library, Bayside Area Library; Ms. Susan Getgood, Vice President of the Education Market SurfControl; and Mr. Chris Ophus, President of FamilyConnect, Inc.

I appreciate all of you getting your statements, which are made part of the record in their entirety, in advance. And since the vote has not started as the Cloakroom promised, we will start with Mr. Taylor's testimony.

We are going to have a clock on you up here for about 5 minutes. So you will notice these little lights and buzzers, and everything else. You have got 5 minutes to proceed, and all of your statements are made as part of the record in their entirety.

Mr. TAYLOR. Thank you, Mr. Chairman, and Members of the Committee. The National Law Center——

Mr. UPTON. Since the vote has started, we are going to have to break this up anyway, I think we may adjourn. Is this going to be one vote or two?

Mr. BLUNT. I do not know.

Mr. UPTON. Is it going to be two votes? My guess is that it is going to be two. Well, at this point, since Mr. Pickering came, we will allow Mr. Pickering, who is one of the architects in the CHIPA bill, to make an opening statement.

At that point, we will adjourn for about 15 minutes, and I will do my best to round up some Members to come back and we will start with you, Mr. Taylor, if that is okay. Maybe Mr. Luther has an opening statement as well. Mr. Pickering.

Mr. PICKERING. Mr. Chairman, I would just like to thank you for holding this hearing. I look forward to hearing from the panel as we ask questions and as we see CHIPA, the Children's Internet Protection Act, implemented, and it is soon to be implemented.

And hopefully we can find some common ground, but if not, hopefully we can establish the record that this is a common sense,

mainstream, constitutional way to protect our children from child predators, from obscenity, from child pornography, that which is already illegal.

We believe that the language and the legislation was very well crafted, taking lessons from recent communications efforts to restrict this type of material, but that was ruled unconstitutional in the Courts.

We believe that we avoided those pitfalls and those problems by the way that we crafted the language. This is an issue of funding, and it is an issue of child safety. And just as we give incentives to States to have alcohol blood limits, or seat belt restraints, for the safety of the public, we believe that for the safety of our children, as well as preventing that which is illegal—child pornography and obscenity—from having access through our schools, and through our libraries with Federal subsidies.

And we believe that this is a very mainstream, common sense, approach, and that the agenda of the other side who opposes is out of the mainstream, and it is extreme. It would put our children at risk. So I look forward to the testimony today and the questions as we establish a record in this regard.

[The prepared statement of Hon. Chip Pickering follows:]

PREPARED STATEMENT OF HON. CHIP PICKERING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. Chairman, I appreciate your holding this hearing today. I believe you have given us the opportunity to expose the myths and distortions of this legislation that it has been subjected to by its opponents.

Throughout this hearing today we will hear several common arguments by those who support federally funded access to child pornography and obscenity, and let there be no mistake that this is the bottom line in this debate.

Opponents of CIPA have made 5 basic arguments and I would like to take a minute to refute their charges.

1. **CIPA is constitutional** because the conditions imposed on public libraries for receiving federal funds for Internet access are "reasonably calculated to promote the general welfare" and are "related to a national concern." Congress has the authority and responsibility to ensure that federal funds are not used by government agencies (pubic schools and libraries) to provide access to pornography that is illegal under federal law, i.e., obscenity (18 U.S.C. §§ 1462, 1465), child pornography (18 U.S.C. § 2252 *et seq*.) and that which is illegal under most state laws, material harmful to minors displayed or distributed to minors. CIPA also promotes the national interest by encouraging advancements in software filtering technology.

The Supreme Court upheld a federal regulation that directed the Secretary of Transportation to withhold a percentage of otherwise allocable federal highway funds from States "in which the purchase or public possession . . . of any alcoholic beverage by a person who is less than 21 years of age is lawful." The Court held: "Incident to the spending power, Congress may attach conditions on the receipt of federal funds. However, exercise of the power is subject to certain restrictions, including that it must be in pursuit of "the general welfare." Sec. 158 is consistent with such restriction, since the means chosen by Congress to address a dangerous situation—the interstate problem resulting from the incentive, created by differing state drinking ages, for young persons to combine drinking and driving—were reasonably calculated to advance the general welfare." *South Dakota v. Dole,* 483 U.S. 203 (1987).

CIPA does not require all public libraries and schools to use filtering software, only those that accept particular federal funds for Internet access. The government has no duty to fund access to illegal pornography on the Internet, especially in government agencies (public schools and libraries). In *Kreimer v. Bureau of Police for Town of Morristown,* 958 F.2d 1242, 1256 (3rd Cir. 1992), the court, held: "The State, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated." [Citing *Perry Education Association v. Perry Local Educators' Association,* 460 U.S. 37, 44 (1983)].

CIPA is not viewpoint discrimination; it has nothing to do with disagreement with the speaker's view. *Rosenberger v. Rector & Visitors of Univ. of Virginia,* 515 U.S. 819, 829 (1995). The Supreme Court has consistently recognized that the government may allocate funding according to criteria that would not be permissible in enacting a direct regulation.

In *National Endowment for the Arts v. Finley,* 118 S. Ct. 2168 (1998), the Court held that, "the Government may allocate competitive funding according to criteria that would be impermissible were direct regulation of speech or a criminal penalty at stake." *Id.* at 2179. "it is preposterous to equate the denial of taxpayer subsidy with measures aimed at the suppression of dangerous ideas." *Regan v. Taxation with Representation,* 461 U.S. 540, 550 (1983). "The Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program." *Rust v. Sullivan,* 500 U.S. 173, 193 (1991).

2. **CIPA advances legitimate local library decisions.** CIPA permits local library officials to determine which software filter they will use, and to set their own Internet policy. Federal funds may be used to cover costs of filtering. CIPA permits a public library official to disable the filter for bona fide research or other legal use by an adult. Local officials have the right to oversee the filtering technology to make certain that it complies with CIPA and their policy. CIPA will assist local libraries to avoid sexual harassment and hostile work environment complaints caused by the presence of Internet pornography, such as has occurred in the Minneapolis and Chicago public libraries. "A school library, no less than any other public library, is a "place dedicated to quiet, to knowledge, and to beauty." *Brown v. Louisiana,* 383 U.S. 131, 142 (1966) (J. Fortas). It is inconsistent with the purpose of a public library to provide a peep show open to children and funded by Congress.

3. **CIPA will assist parents in poor communities to protect their children from pornography while permitting safe and rewarding Internet access in public libraries.** It is much more likely that most parents will not permit their children to use unfiltered Internet access. Furthermore, parents who are able to provide filtered Internet access in their home will be able to protect their children, while poor children, dependent upon library Internet access, will not have the same protection. The true "digital divide" is between protected children and unprotected children who are exposed to pornography and pedophiles in libraries with unfiltered Internet access. In *Ginsberg v. New York,* 390 U.S. 629 (1968), the Court recognized that parents have a right to expect the government to aid them in protecting their children from pornography: "While the supervision of children's reading may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them. It is, therefore, altogether fitting and proper for a state to include in a statute designed to regulate the sale of pornography to children special standards, broader than those embodied in legislation aimed at controlling dissemination of such materials to adults."

4. **CIPA provides security—not a false sense of security.** A library should inform the public whether the Internet access provided is filtered or unfiltered. If filtered, the library should also inform users that filters are not 100 percent effective in blocking pornography. Filters are like the safety equipment on cars, e.g., the brakes, seat belts, and headlights. We do not require 100 percent effectiveness by any safety equipment before we use it. While we provide children with driver's education and adult supervision, we do not permit children to drive cars without safety equipment and expect them to navigate safely on roads without traffic controls, speed limits and law enforcement officers.

In the past two years, use of software filtering by public libraries has increased 121 percent. A survey published in *School Library Journal,* April-May 2000, reveals that 90 percent of public school librarians and public librarians are either "very well" or "somewhat well satisfied" with filtering software. A February 2000 survey conducted by National Public Radio, the Kaiser Foundation and the Kennedy School of Government revealed that 84 percent of Americans are worried about children online accessing pornography. Seventy-five percent want government to do something about it. Congress did so in CIPA. Once again, I thank you for holding this hearing and look forward to hearing from the witnesses.

Mr. UPTON. Thank you. Mr. Luther, from Minnesota.

Mr. LUTHER. Mr. Chairman, thank you. I will submit my opening statement for the record.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

I thank Subcommittee Chairman Upton for calling this hearing. This is a timely hearing given the upcoming FCC final rules and the recently filed court cases.

Today's hearing focuses on the Children's Internet Protection Act ("CIPA" or "CHIPA") that was enacted as part of the final spending bill at the closing days of the 106th Congress. It is an effort to address one of the downsides of the Internet—the availability of obscene and illegal material over the Internet. For all of the benefits of the Internet, and we know there are many, it is clear that some depraved individuals are using the new technologies in harmful and corrupting manner. CHIPA is designed as a condition on receiving federal funds. This is unlike past attempts by Congress to address the availability of such material, which enacted straight bans or imposed access requirements.

I think most people agree that the Internet is an amazing technological innovation. It has essentially created a whole new medium for communicating and conducting business. We can see vast benefits of the Internet almost everyday. The Internet has essentially turned everyone and every computer into their own printing press. It has also dramatically lowered the cost of doing business and reaching new markets.

We, as policymakers, should ensure that we cause the Internet no harm as it develops from its infancy to adulthood. We have an obligation to shepherd the medium as it grows in age and maturity. Recently, Internet stocks have behaved like a child going through the terrible two's. While it seems rough now, this will pass and experienced, well thought-out business plans can and will succeed in the marketplace.

However, just because an activity is occurring over the Internet does not necessarily mean that it is untouchable. Clearly, there is also a dark side to the Internet. Some people are using the medium to illegally transport material including child pornography and material that is harmful to minors. This type of material is not protected by the First Amendment and traffickers should be prosecuted. Last Congress, we held a hearing on enforcement, or lack of enforcement, efforts by the Department of Justice. I am hopeful that the new Administration will actively pursue violators. I want to acknowledge the leadership of Congressman Pickering and Congressman Largent on this important matter.

In terms of CHIPA, while I understand the complaints filed by the ALCU and the American Libraries Association, I think it best not to comment on these court cases. CHIPA does include an accelerated court review process of the law, including an automatic referral to the Supreme Court. This should help minimize uncertainty for parents, schools, libraries and others. I also note that the cases focus on the funding restrictions on *libraries* contained in CHIPA and not the restrictions on funding for *schools.* Let me repeat, the schools portion of the E-rate program is not being challenged at this time. America's schools should proceed with the process of preparing to comply with the parameters of the law.

CHIPA also includes a provision requiring NTIA to conduct a study of filtering and blocking technologies to determine whether they meet the needs of educational institutions. The findings of this study are not due for some time but I am hopeful that NTIA can provide a preliminary report on its findings and recommendations. We could use a clearer picture of the effectiveness of filtering or blocking technologies.

Furthermore, America's libraries are clearly not doing enough. Unsupervised Internet access has the potential to turn schools and libraries into modern day pornography shops. Many libraries and supporting communities have taken positive steps to protect the education and community setting of their libraries. I commend these libraries for having the foresight to understand the need to protect its members, especially the children. I make the call to all libraries to follow suit and address a prevalent problem, which accompanies the low cost of Internet access.

Again, I thank the Subcommittee Chairman and look forward to the testimony of the witnesses.

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman: I want to commend you for holding this important hearing today to get a better understanding of the of the recently passed Children's Internet Protection Act (CHIP Act).

Last years decision by our colleague in the Senate to include this legislation in the Consolidated Appropriations Act of 2001 was ill-timed and unwise.

This legislation was enacted without any significant hearings or public input and has now placed our schools and public libraries in a delicate legal position.

Once again Congress, in its rush to protect children from online smut, has over regulated the issue.

Although I support the principles of the Chip Act as it applies to schools. My support is based on the fact that is illegal under just about any circumstances for a minor of any age to access any type of pornographic material.

Schools can exercise a greater level of control over student viewing habits because most of the students are minors.

Trying to regulate content available over the Internet to adults at taxpayer funded public libraries once again sets up a new round of litigation covering the First Amendment.

In addition, it forces librarians into the role of judging what material is simply pornographic and what is obscene.

Although I do not differentiate between pornographic and obscene material, I think it is all disgusting, clearly the courts do see a difference.

Under the CHIP Act schools and libraries who receive federal E-Rate monies or Library Services Act funding face the daunting challenge of trying to filter Internet sites for content..

Nowhere in the legislation did I see any funding increases to schools or school districts to hire the additional technical personnel needed to manage the Internet filtering or to fill out the new reports required under the legislation.

Aside from the lack of funding, if the legislation had stuck to schools and not libraries we may not be facing the current round of litigation over whether the legislation violates the First Amendment.

I do not want children of any age to have access to pornographic or obscene material whether at school or the library.

But when we start trying to regulate what adults can view at a publically funded library, I question the wisdom of the legislation.

We are now asking our librarians to police the Internet and to make subjective content decisions that only a court can determine.

On top of that, we have imposed what I consider draconian reporting and compliance measures that will discourage use of the E-rate.

In reviewing the witness testimony, I can see a lot of the same concerns being echoed by the panelists.

I was encouraged to see that Ms. Caywood has what appears to be a compromise solution to this problem.

Breaking Internet access into layers of filtering, but retaining computers that have no filtering software seems to me to be a workable solution.

In addition, providing a physical privacy shield to the unfiltered computers prevents anyone other than user from seeing the material being viewed.

These steps do not limit free speech or place librarians in the position of having to judge content.

Every time Congress tries to legislate morality, not matter how worthy the issue, it seems we take it one step to far.

This legislation has strapped our schools and libraries with a huge unfunded mandate and has made teachers and librarians cops of the Internet.

I am sure this legislation is going to be litigated extensively, but I am equally sure that the states will be coming to us to pay for the related compliance and reporting requirements.

Mr. Chairman, I look forward to questioning the witnesses and I yield back the balance of my time.

Mr. UPTON. Okay. Since the vote is on, we will adjourn until about 10:35 or 10:40.

[Brief recess]

Mr. UPTON. We have about an hour until the next vote on the floor. That will be two votes in a row. So at this point, we will start with Mr. Johnson, and we will come back to Mr. Taylor when he comes back. Mr. Johnson, welcome.

STATEMENT OF MARVIN J. JOHNSON, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. JOHNSON. Thank you, Mr. Chairman. Mr. Chairman, and Members of the Committee, I thank you for this opportunity to tes-

tify regarding the effectiveness of the Children's Internet Protection Act or CHIPA.

CHIPA requires that public libraries and schools implement mandatory blocking of obscenity, child pornography, and material harmful to minors, in those facilities receiving specified Federal funds.

CHIPA does not just block information for children, however. It also blocks information for adults. Adults can only get unblocked access if they ask for permission from a librarian, and they convince the librarian that they have a bona fide research purpose or other lawful purpose, whatever that may mean.

Anyone who may want to research something that is going to be sensitive—for instance, health information—may be deterred from seeking this permission, or they will be forced to lie. The end result is a dummying down of the Internet and the information available through the Internet in public libraries.

Now, we all want to protect our children. However, in doing so, we have to be careful not to throw out the baby with the bathwater. Unfortunately, CHIPA not only throws out the baby and the bathwater, but it throws out the bathtub and the house as well.

CHIPA makes about as much sense as a law requiring a stranger to randomly pull books off shelves and refuse to tell librarians or patrons which books are gone. CHIPA is anomalous given the fact that Congress appointed a panel of experts to study ways to protect children on the Internet, and then pointedly ignore those findings in enacting CHIPA.

In October 1998, Congress appointed the Child On-Line Protection Act Commission, or COPA Commission, and charged it with identifying technological or other methods that would help reduce access by minors to materials that is harmful to minors on the Internet.

In October of 2000, the Commission reported that blocking technology raises First Amendment Concerns because of its potential to be over-inclusive in blocking content, concerns are increased because the extent of blocking is often unclear and not disclosed, and may not be based on parental choices.

The Commission specifically did not recommend any mandatory blocking technologies. Congress, nonetheless, chose to ignore those recommendations and they adopted CHIPA. Now, CHIPA is destined to be ineffective when it is implemented because technology protection measures do not work.

First of all, there is just too much information available to be able to index it and retrieve it. The web is estimated to have over 1.5 billion pages, and by the end of 2001, to have between 3 to 5 billion pages of information available.

They grow at a rate of approximately 200 million pages, or 2 million pages, excuse me, per day. The sheer amount of information and the fact that that information constantly changes makes it impossible to review and index all of that information.

Second, the problem is under-blocking, and under-blocking means that it does not block all of the so-called objectionable material that it is intended to block.

For example, one software package was tested for under-blocking, and hundreds of pornographic websites were not blocked by the software.

Examples included 069Palace.com. HotAsianFoxes.com, and Organism.com. Blocking therefore just provides a false sense of security for parents who believe that their children are being protected when in fact they are not.

The third problem with blocking is that it over-blocks, and that means that it blocks information that is not objectionable. Last year during the election cycle, numerous political websites were blocked, including Representative Lloyd Dockett of Texas; Representative Jim Ryan of Kansas; and House Majority Leader Dick Armey.

From this subcommittee, Ranking Member Markey found his site blocked because it was characterized as hate, illegal pornography, and/or violence. In March of this year, Consumer Reports found that the blocking software is generally ineffective, both because of the under-blocking and the overblocking.

The fourth reason is that technology is inexact, and so what it leads to is a significant constitutional problem because of both the under and the overblocking. Thus, not only will this technology not work, but the Act will be stricken as unconstitutional.

There are less restrictive ways for Congress and libraries, and particularly libraries, to be able to protect children when they use the Internet, and many libraries are using these now.

For example, one is to use library web pages. They have their own web pages where they have reviewed the information, and they review the accuracy and adequacy of that information, and then they put that on their web pages, and that helps guide people away from possibly objectionable material.

And it makes sure that they get the best information possible on the Internet. Second, educational programs also are useful to educate parents and children, and last, Internet use policies are also useful as well. In conclusion, Mr. Chairman, we can find ways to protect our kids and honor the Constitution at the same time. We don't cherish our children by destroying the First Amendment Rights that are their legacy.

[The prepared statement of Marvin J. Johnson follows:]

PREPARED STATEMENT OF MARVIN J. JOHNSON, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman, and members of the Committee: I am Marvin J. Johnson, Legislative Counsel for the American Civil Liberties Union.

I appreciate the opportunity to testify before you today about the Children's Internet Protection Act (CHIPA) on behalf of the American Civil Liberties Union. The ACLU is a nation-wide, non-partisan organization of more than 275,000 members devoted to protecting the principles of freedom set forth in the Bill of Rights and the Constitution.

The hearing today is to determine the effectiveness of the Children's Internet Protection Act. CHIPA was signed into law on December 21, 2000. It will become effective on April 20, 2001. § 1712(b) (to be codified at 20 U.S.C. § 9134); § 1721(h) (to be codified at 47 U.S.C. § 254(h)). CHIPA requires that public libraries receiving e-rate discounts or funds under the Library Services Technology Act (LSTA) implement and enforce technology protection measures to block obscenity, child pornography and material harmful to minors.

Under the e-rate provisions, libraries that do not timely certify their compliance become ineligible for further e-rate discounts. Where the library knowingly fails to insure compliance, it may be required to reimburse any discounts received for the

period covered by the certification. Libraries receiving LSTA funds are not required to reimburse the government in the event they fail to comply with CHIPA.

CHIPA's restrictions are not limited to library Internet access supported only by the federal e-rate and LSTA programs. Both the e-rate restrictions in Section 1721(b) and the LSTA restrictions in Section 1712 require libraries to certify that technology protection measures are in place on "*any* of its computers with Internet access" and "during *any* use of such computers." § 1721(b) (to be codified at 47 U.S.C. § 254(h)(6)(C)(i)-(ii)); § 1712.15 (to be codified at 20 U.S.C. § 9134(f)(1)(B)(i)-(ii)) [Emphasis added]. A library subject to CHIPA must install and enforce the operation of technology protection measures on all of its computers with Internet access even if the library purchased the computers or paid for Internet access with money that is not from federal programs.

While CHIPA is not yet in effect, it will be ineffective. There is no reliable way to block out all objectionable material, so any technological protection measure will be ineffective in removing that material from view. Furthermore, all of the current technological protection measures block significant amounts of material that deserve constitutional protection. This overbreadth is one of the reasons CHIPA is unconstitutional.

TECHNOLOGY PROTECTION MEASURES DO NOT WORK

CHIPA will be ineffective because no available technology can implement its mandate.

CHIPA defines a "technology protection measure" as "a specific technology that blocks or filters Internet access to the material covered by a certification." 57 U.S.C. § 254(h)(6)(H). CHIPA requires blocking of material that is obscene, child pornography, or harmful to minors. It is not possible to create a technology protection measure that blocks access only to material that is "obscene," "child pornography," or "harmful to minors" as defined by CHIPA, or that blocks access to all material that meets those definitions.

In order to understand the reason these technological protection measures are destined to fail, one must understand the nature of the technology.

The World Wide Web is now estimated to contain over 1.5 billion pages. It continues to grow and change at a geometric rate. Thus, there is a massive amount of information to catalog, and that information continues to change and grow every day.

Private companies produce technology that is designed to block access to particular content on the web. The technology is commonly referred to as "blocking software" or "blocking programs." These programs are computer software that is designed to block content on the Internet that would otherwise be available to all Internet users.

Vendors of this software establish criteria to identify specific categories of speech on the Internet. They then configure the software to block web pages containing those categories of speech. Some programs block as few as six categories, while others block up to twenty-nine or more categories. These categories may include hate speech, criminal activity, sexually explicit speech, "adult" speech, violent speech or speech using specific disfavored words. Some of the blocked categories express disapproval of a particular viewpoint, such as a category that blocks all information about "alternative" lifestyles including homosexuality.

The terms "obscenity," "child pornography" and "harmful to minors" as used in CHIPA are legal terms. None of the current vendors of blocking technology claim to block categories that meet these legal definitions, nor do they employ attorneys or judges to make those determinations. Leaving decisions of what constitutes obscenity, child pornography and material harmful to minors up to legally untrained persons leads to more information being blocked than is legally permissible.

Once blocking program vendors establish the criteria for information they intend to block, they establish a method of identifying the web pages that meet that criteria. Generally, they conduct automated searches based on words or strings of words, similar to searches done by standard search engines. Web pages are usually blocked in their entirety if any content on the web page fits the vendors' content categories, regardless of whether the content on the page is textual, visual, or both.

No technology currently available allows vendors to conduct automated searches for visual images that fit their content categories, or that are communicated through email, chat, or online discussion groups. As a result, any implementation of this technology is under-inclusive, allowing access to material that CHIPA intends to block.

After using this technology to identify web sites to block, the blocking program vendors add these pages to a master list of web pages to block ("blocked sites list").

Some vendors claim to have employees review individual web sites before adding them to the blocked site list. These employees, however, are not lawyers or judges, and receive no legal training. There is a great deal of employee turnover in these jobs. As a result, untrained employees are making what are essentially legal decisions and excluding constitutionally protected material.

An operational blocking program then blocks users from accessing web pages on the program's blocked sites list. Vendors normally treat their blocked sites list as a trade secret, and refuse to reveal this information to their customers, prospective customers, or to the public.

Two blocking techniques can be used by program vendors to block access to email, chat, and online discussion groups. First, the blocking programs may block access to all email, chat, and online discussion groups. Second, the programs may selectively block out particular words communicated through email, chat, or discussion groups. For example, the programs may replace supposedly objectionable words with "xxx" regardless of the context in which the word was used. Hence Marc Rotenberg's[1] blocked version of the First Amendment: "Congress shall make no law abridging the freedom of sXXXch, or the right of the people peaceably to XXXemble, and to peXXXion the government for a redress of grievances."

Because of the way these blocking programs work, they inherently rely upon the exercise of subjective human judgment by the vendor to decide what is objectionable and what is not. The vendor, rather than librarians, other government officials, adult patrons, or parents decide what gets placed on the "blocked sites" list.

Furthermore, because of the massive amounts of information available on the web, and its constantly changing content, no company can keep up with all the information or changes. It is estimated that even the most sophisticated search techniques find less than 20% of the web. Therefore, the idea that blocking technology will block out all of the objectionable information on the web is an impossibility. Although blocking program vendors provide updates to their blocked sites list, it is impossible for them to find all of the content on the Internet that meets their criteria, or to keep up with the rapidly increasing and changing content available.

In March, 2001, Consumer Reports tested blocking software, and found that most failed to block at least 20% of objectionable material. Consumer Reports, March 1, 2001, "Digital Chaperones for kids" found at http://www.consumerreports.org/Special/ConsumerInterest/Reports/0103fil0.html

Not only does blocking software fail to block all material meeting the legal definitions of "obscenity," "child pornography" and material "harmful to minors," it also blocks much material which is not objectionable, and protected under the First Amendment. Because of this overbreadth, CHIPA will be found unconstitutional, and therefore, ineffective.

The federal government and others have repeatedly documented the failures and flaws of blocking programs. The United States Attorney General has said that blocking programs inescapably fail to block objectionable speech because they are unable to screen for images. Brief for the Appellants, Reno v. ACLU, No. 96-511 (January 1997) at 40-41. Congress itself has repeatedly noted these flaws. A House report found that such software is "not the preferred solution" because of the risk that "protected, harmless, or innocent speech would be accidentally or inappropriately blocked." H.R. Rep. No. 105-775 (1998) at 19.

In October 1998, Congress appointed the Child Online Protection Act Commission ("COPA Commission"), and charged it with "identify[ing] technological or other methods that will help reduce access by minors to material that is harmful to minors on the Internet." In October 2000, the Commission reported that blocking "technology raises First Amendment concerns because of its potential to be over-inclusive in blocking content. Concerns are increased because the extent of blocking is often unclear and not disclosed, and may not be based on parental choices." The Commission specifically did not recommend any government-imposed mandatory use of blocking technologies.

On October 23, 2000, Peacefire[2] issued a report of blocking technology which found error rates anywhere from 20% to 80%. Error rates were based on sites being blocked as "pornography" when they were, in fact, not pornographic. Study of Average Error Rates for Censorware Programs, October 23, 2000, found at http://www.peacefire.org/error-rates/

On November 7, 2000, Peacefire issued its report *Blind Ballots: Web Sites of U.S. Political Candidates Censored by Censorware.* (http://www.peacefire.org/blind-ballots/). The report found numerous political candidates' sites were blocked by this software. Jeffery Pollock, Republican candidate for Congress in Oregon's Third Congressional District, had originally favored blocking software. After hearing that his site was one of those blocked, he reversed his position. The site of Congressman Markey, the Ranking Minority member of this subcommittee was also blocked by

one of the programs that characterized his site as "Hate, Illegal, Pornography, and/or Violence."

Proponents of blocking often claim that even if some web sites are blocked, there are others available on the topic that may be unblocked so the information will ultimately be available. This position makes little sense, particularly when discussing candidate web sites. Should a Republican candidate be soothed by the fact that his blocked views may be found and discussed at his Democratic opponent's unblocked web site?

On December 12, 2000, Peacefire published a report demonstrating that sites of human rights groups were being blocked by this software. *Amnesty Intercepted: Global human rights groups blocked by Web censoring software,* December 12, 2000, found at: http://www.peacefire.org/amnesty-intercepted/

Consumer Reports in March 2001 found that blocking software varied from 20% to 63% in its over-blocking.

Despite protestations from blocking software supporters that instances of over-blocking are all "old" examples remedied by newer versions, these examples are all recent. The flaws of blocking programs are not a matter of individual flaws in individual products. These flaws are inevitable given the task and the limitations of the technology.

As a result of these problems, blocking software fails to protect because it cannot block all material that meets the CHIPA criteria. Furthermore, it blocks a huge amount of information that should not be considered objectionable, and is clearly protected under the First Amendment.

CHIPA RESTRICTS ADULT ACCESS AS WELL AS MINORS

While CHIPA purports to protect minors by blocking their access to the Internet, it also blocks adult access. By sweeping so broadly, CHIPA violates the Constitution.

Section 1721(b) of CHIPA requires public libraries that participate in the federal e-rate program to certify to the FCC that they are "(i) enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to computers with Internet access that protects against access through such computers to visual depictions that are (I) obscene; or (II) child pornography; and (ii) is enforcing the operation of such technology measure during *any use* of such computers." § 1721 (to be codified at 47 U.S.C. § 254 (h)(6)(C)). [Emphasis added.]

Section 1712 of CHIPA applies to libraries that do not receive the e-rate discount but receive funds pursuant to 20 U.S.C. § 9134(b), the Library Services and Technology Act (LSTA), "to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet." § 1712 (to be codified at 20 U.S.C. 9134(f)(1)). Section 1712 requires the same installation and enforcement of technology protection measures as is required by Section 1721(b). § 1712 (to be codified at 20 U.S.C. 9134(f)(1)(A) and (B)).

CHIPA's restrictions are not limited to library Internet access supported only by the federal e-rate and LSTA programs. Both the e-rate restrictions in Section 1721(b) and the LSTA restrictions in Section 1712 require libraries to certify that technology protection measures are in place on "*any* of its computers with Internet access" and "during *any* use of such computers." § 1721(b) (to be codified at 47 U.S.C. § 254(h)(6)(C)(i)-(ii)); § 1712.15 (to be codified at 20 U.S.C. § 9134(f)(1)(B)(i)-(ii)) [Emphasis added].

Thus, while CHIPA is commonly referred to as a "child protection measure," it goes further and operates to block adult access as well. In doing so, CHIPA will follow the CDA and COPA along the trail of unconstitutional attempts to censor the Internet.

CHIPA FURTHER ACCENTUATES THE DIGITAL DIVIDE

CHIPA will have little effect on the rich. They can afford their own computers with unfiltered access. The poor who have to rely upon library access to perform job searches, school homework, and general research are the ones who will be penalized by CHIPA.

Public libraries play a crucial role in affording access to the economic and social benefits of the Internet to those who do not have computers at home. Libraries assure that advanced information services are universally available to all segments of the American population on an equitable basis.

For many people who cannot afford a personal computer or network connections, Internet access at public libraries may be their only means of accessing the Internet. Minorities, low-income persons, the less educated, children of single-parent households, and persons who reside in rural areas are less likely than others to have home Internet access. For example, Whites are more likely to have access to the

Internet from home than Blacks or Latinos have from any location. Black and Latino households are less than half as likely to have home Internet access as White households.[3] According to the National Telecommunications and Information Administration, this "digital divide" is growing. CHIPA will only worsen the situation with these unintended consequences.

CHIPA OVERRIDES LOCAL CONTROL AND DECISION-MAKING

Many communities spent a lot of time studying the issue of Internet access and how to deal with it in their public libraries. Kalamazoo, Michigan, Holland, Michigan, and Multnomah County Public Library are a few such examples. In each case, they decided blocking software was inappropriate for their libraries, and they opted for other, less restrictive measures to protect their children.

CHIPA ignores and overrides those local decisions, instead opting for a "one size fits all" scheme that is unworkable and unconstitutional.

CHIPA IS UNCONSTITUTIONAL BECAUSE IT LIMITS FREE SPEECH

CHIPA will further be ineffective to protect children because it will be stricken as unconstitutional.

As you know, on March 20, 2001, the ACLU and the American Library Association each filed a lawsuit in the Eastern District of Pennsylvania against the Children's Internet Protection Act (CHIPA). Under the Act, any challenge will be heard by a panel of three judges, and appeals from any decision of the panel will go directly to the United States Supreme Court. The three judges were just recently appointed.

The First Amendment Applies to the Internet

In *Reno I*,[4] a unanimous Supreme Court held that the First Amendment applies to the Internet. The Court found the Internet should be afforded the highest protection under the First Amendment, equivalent to that provided books, newspapers, and magazines.[5] Therefore, any attempted regulation of Internet speech such as CHIPA is constitutionally suspect.

The First Amendment includes the right to receive information as well as to speak.

While the First Amendment discusses the freedom of speech, the Supreme Court has made it clear that it also encompasses the fundamental right to receive information.[6] In *Reno I*, the Supreme Court confirmed that the right to receive information applies without qualification to expression on the Internet.[7] Thus, attempts such as CHIPA to restrict information affect the constitutional rights not only of the speaker, but the recipient as well. For example, blocking a web site on safe sex violates the rights of the web site operator (the speaker) but also the rights of the one who wishes to review that material (the recipient).

CHIPA Is a Content-Based Restriction on Speech That Fails the Strict Scrutiny Test

CHIPA purports to restrict speech based on its content (obscenity, child pornography, and material harmful to minors). Additionally, many blocking software vendors block sites they find politically objectionable, for example, sites that discuss or condemn homosexuality. "Content-based regulations are presumptively invalid."[8] In order to overcome the presumption of unconstitutionality, content-based restrictions must meet the strict scrutiny standard[9] and survive an exacting test. The strict scrutiny test requires that the challenged statute or regulation is necessary to serve a compelling governmental interest, and is narrowly drawn to achieve that end.[10] "It is not enough to show that the Government's ends are compelling; the means must be carefully tailored to achieve those ends."[11]

Narrow Tailoring and Least Restrictive Means

Under the strict scrutiny analysis, the government has the burden of establishing that a regulation is the least restrictive means and narrowly tailored to its objective.[12] In other words, the Government is not allowed to use a nuclear bomb when a small side arm would suffice.

Government regulation of the Internet often fails because it attempts to "burn the house to roast the pig."[13] For example, in Reno, the Court noted

> "[we] are persuaded that the CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech. In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. That burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve."

Because there were less restrictive alternatives available that would be at least as effective as the CDA, the Court found the act unconstitutional.

Like the CDA, CHIPA restricts far more speech than is targeted. As noted above, no technology available today reliably blocks only obscenity, child pornography and material harmful to minors. Thus, a broad range of speech protected under the First Amendment gets sidelined, while the filters also allow objectionable speech to get through.

In passing CHIPA, Congress failed to consider less restrictive alternatives. It also failed to heed the report of the COPA Commission which did *not* recommend mandatory blocking programs, and recommended various less restrictive alternatives.

CHIPA Is Overbroad

Overbreadth is a test that is used when an otherwise legitimate regulation also affects speech that may not be lawfully restricted.

An example of an overbroad statute appears in Reno I, where the Court reviewed the constitutionality of the Communications Decency Act (CDA)[14], Congress' first attempt to regulate content on the Internet. In invalidating the CDA, the Court noted the act's breadth was unprecedented,[15] and that it suppressed a large amount of speech that adults have a constitutional right to send and receive. Therefore, even though the intent may be to protect children, a law or regulation that burdens speech which adults have a constitutional right to receive is unconstitutional "if less restrictive alternatives would be at least as effective in achieving the Act's legitimate purposes."[16]

Because the effect of CHIPA is to suppress more speech than is necessary to achieve the government's objective, it is fatally overbroad.

CHIPA Is An Unconstitutional Prior Restraint

Under the prior restraint doctrine, the government may not restrain protected speech without the benefit of clear objective standards or adequate procedural safeguards, including provisions for administrative review, time limitations on the review process, and provisions for prompt judicial review.[17]

CHIPA implicitly assumes, for example, that a blocking software vendor can legitimately determine whether expression is unprotected by the Constitution. From a legal standpoint, that assumption is incorrect.

In 1973, the Supreme Court in *Miller v. California,*[18] crafted the definition of obscenity still used today. Known as the Miller test, it requires that a trier of fact (a judge or jury) examine the work and determine:

1. Whether "the average person, applying contemporary community standards" would find that the work taken as a whole, appeals to the prurient interest;
2. Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined in the applicable state law; and
3. Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Only if the answer to all of these questions is "yes" can a work be judged "obscene" and *only then* does it lose its protection under the First Amendment.

In order to place certain speech into the category of obscenity, the government must initially provide a series of procedural safeguards. First, there must be a statute specifically defining the sexual conduct that may not be depicted or displayed. This requirement helps guarantee that speakers have fair notice of what is prohibited.[19] Second, the material cannot legitimately be banned without a full adversarial trial. Finally, a jury must be available to apply the relevant "community standards" for obscenity to the challenged material.

The fact that a school or library uses third-party software that decides what is "obscene" material exacerbates the policy's unconstitutionality. "[A] defendant cannot avoid its constitutional obligation by contracting out its decisionmaking to a private entity."[20]

Mandatory blocking policies that rely on commercial blocking software constitute prior restraints because they "entrust all . . . blocking decisions . . . to a private vendor" whose standards and practices cannot be monitored by the blocking library.[21] All substantive blocking decisions by commercial suppliers necessarily lie outside the control of the government; consequently, each blocking decision inherently lacks the requisite procedural safeguards. In fact, in *Mainstream Loudoun,* the blocking software provider refused to provide the defendants with the criteria it used to block sites, let alone the names of the actual sites blocked.[22] Mandatory blocking policies like CHIPA thus confer unbridled discretion on commercial software providers, allowing them to restrict access indiscriminately and without any administrative or judicial review.

In short, no speech is unprotected by the Constitution until a court determines it to be so. CHIPA attempts to bypass legal requirements and thus runs afoul of the Constitution.

CHIPA Is Unconstitutionally Vague

It is a general principle of law that "laws [must] give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly."[23] If a law is too vague to give this "reasonable opportunity," it is deemed void for vagueness. When a law interferes with the right of free speech, the courts apply a more stringent variation of the vagueness test.[24] The Supreme Court has recognized that First Amendment "freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."[25]

In order to avoid the vice of vagueness, the law or regulation "must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."[26] Therefore, the law must provide an "ascertainable standard for inclusion and exclusion."[27] When that standard is missing, the law unconstitutionally produces a chilling effect on speech, inducing speakers to "steer far wider of the unlawful zone" than if the boundaries were clearly marked.[28] It forces people to conform their speech to "that which is unquestionably safe."[29]

CHIPA provides that "[a]n administrator, supervisor, or other person authorized by the certifying authority . . . may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose." No definition of "bona fide research or other lawful purpose" is provided. § 1721 (to be codified at 47 U.S.C. § 254 (h)(6)(D)). Section 1712 provides that "[a]n administrator, supervisor, or other authority may disable a technology protection measure . . . to enable access for bona fide research or other lawful purposes." § 1712 (to be codified at 20 U.S.C. § 9134(f)(3)). Unlike the comparable e-rate section, this provision appears to apply to minors as well as adults. Again, no definition is provided for "bona fide research or other lawful purpose." The phrase is left to the interpretation of each librarian or staff person tasked with making that determination.

CHIPA Violates Constitutionally Protected Anonymity and Privacy

CHIPA requires adults (and perhaps minors in the case of LSTA funds) to seek permission from a government official in order to obtain unblocked access. In doing so, a patron requesting such access loses his or her anonymity and privacy. The Constitution protects anonymity and privacy in communications and the ability to receive information anonymously.[30]

CHIPA Violates the Unconstitutional Conditions Doctrine

Broadly speaking, the unconstitutional conditions doctrine holds that Congress may not condition receipt of federal funds upon the waiver of a constitutional right. Under CHIPA, Congress conditions receipt of federal money (except in the case of the e-rate) on the condition that libraries violate the First Amendment.

During debates on the Children's Internet Protection Act (CHIPA), some proponents claimed there was no constitutional infirmity in conditioning receipt of federal money on acquiring and using blocking software. Even if mandatory blocking itself violated the First Amendment, it was claimed this was circumvented because schools and libraries only had to block if they received federal funds. Since they were under no obligation to receive those funds, there was no violation.

The Supreme Court's decision in *Legal Services Corporation v. Velasquez*[31] reaffirms the long-standing principle that the government may not require the sacrifice of constitutional rights as a condition for receiving a government benefit.[32] In *Velasquez,* Congress required that funds distributed to the Legal Services Corporation not be used to challenge existing welfare laws. Legal Services attorneys therefore could not represent clients in welfare benefits cases if the constitutionality of the welfare laws became an issue. Thus, both the attorney and the client were prohibited from challenging these laws; the attorney because of the funding restrictions, and the client because they could not afford another attorney. The Court thus had to decide "whether one of the conditions imposed by Congress on the use of LSC funds violates the First Amendment rights of LSC grantees and their clients." The majority of the Court concluded that it did.

While concluding that the government may, in certain circumstances, use funding as a tool to mold speech, the Court noted "'[i]t does not follow . . . that viewpoint-

based restrictions are proper when the [government] does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers.'"

The subsidies involved in CHIPA are made to encourage schools and libraries to connect to the Internet. The funds thus are not intended to facilitate a specific message, but rather to encourage the populace to engage in the diversity of views that is the Internet. Also, like in *Velasquez,* the money was given to one entity for the benefit of a third party. In *Velasquez,* the money was given to LSC for the benefit of the clients. In CHIPA, the money is given to schools and libraries for the benefit of the patrons and students.

The situation in *Velasquez* and CHIPA is different than that in *National Endowment for the Arts v. Finley.*[33] In Finley, the Court found the challenged provision only required that the NEA take into account "decency and respect" in making its grants. It was not a determinative factor, but one of several considerations. Thus, Congress had not disallowed any particular viewpoints in subsidizing the arts.

The Court specifically noted the situation might be different if the NEA engaged in viewpoint discrimination:

> If the NEA were to leverage its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints, then we would confront a different case. We have stated that, even in the provision of subsidies, the Government may not "aim at the suppression of dangerous ideas, [citation omitted] and if a subsidy were "manipulated" to have a "coercive effect," then relief could be appropriate. [citation omitted][34]

Velasquez is the latest pronouncement in this area of the law. Since Congress is using federal money to force libraries to violate the First Amendment, *Velasquez* declares that, under these circumstances, CHIPA is unconstitutional.

CONSTITUTIONAL ALTERNATIVES THAT ARE LESS RESTRICTIVE MEANS OF ACCOMPLISHING CONGRESS' GOAL

Congress passed CHIPA with the intent to protect children. For all the reasons noted above, CHIPA is unconstitutional and will be stricken, in addition to being ineffective.

As noted above, many libraries have already implemented options that do not involve blocking software and are at least as effective as blocking. These options include library web sites, educational programs, and Internet Use Policies.

Many libraries have implemented their own "home" pages to help patrons identify high-quality and useful sites. In addition to providing its own content, a library may provide indexes of other links it has evaluated and can recommend. Cataloging and organizing this information helps lead users to resources in the subject areas of interest and consequently helps them avoid unwanted resources. Descriptions on the pages can assist users in deciding whether to visit a particular site.

The same philosophy can be applied to library sites designed specifically for children. The site can provide children with a safe Internet experience by visiting sites reviewed by the librarian.

Many libraries educate patrons about Internet use. Through education, librarians assist patrons in finding useful information and avoiding unwanted information. Many public libraries offer classes on the use of the library, the catalog, indexes and systems. In many libraries, patrons are required to take such classes before they can use public connections. These classes cover the library's use policies. Topics for Internet classes often include: kinds of information and subjects which are likely to be found on the Internet; how to construct effective, high-quality search strategies taking advantage of features of directories and search engines (truncation, Boolean searching, searching on phrases); when to use various kinds of search aids; how to evaluate resources found; and the advantages of using library-approved Web sites and other sites known to collect quality resources.

Education was one of the recommendations made by the COPA Commission in its report of October 20, 2000.

Libraries also may offer classes and resources to help parents assist their children in using the Internet safely and productively. Most reinforce the importance of parental supervision and involvement with children when using the Internet. Parents should teach children to be educated consumers of information and to talk to their parents about what they find online. Parents may be advised to consider setting boundaries on how much time children can be on the Net, and on the kinds of information they look at. Children may also be instructed about the importance of not giving their names, passwords, credit card numbers, or other personally identifying information, or arranging to meet anyone they talk to online without discussing it with their parents. A good example of these guides is the Librarian's Guide to

Cyberspace for Parents and Kids, from the American Library Association. (www.ala.org/parentspage/greatsites/safe.html)

Another method libraries use to educate patrons about Internet use is the development of Internet Use Policies. These policies can remind users about expected use of the library and of library resources in general. The American Library Association has established general guidelines for the development of library policies.

Many libraries require patrons to sign an Internet Use Policy before they can access the Internet. These policies may explain the diversity of information on the Internet, and point patrons to the library-approved resources on the library web page. A substantial number of policies discuss the decentralized, uncontrolled nature of the Internet and warn patrons that they may encounter material they find objectionable. The policy may explain that beyond the library web page, the library does not monitor or control the information on the Internet, and that patrons use it at their own risk. The policy may inform parents that they are responsible for deciding what library resources are appropriate for their children. The policy may also set rules for Internet use, and can impose sanctions for violations, including losing Internet access privileges, and reporting illegal conduct to law enforcement authorities. In many cases, these policies are tied together with educational programs.

There are numerous ways libraries can and do work with parents and children to protect children while they use the Internet. These methods are at least as effective as blocking technology without the side-effect of blocking much material that is constitutionally protected.

CONCLUSION

Protecting children is a laudable goal. CHIPA, however, fails to protect children. No blocking mechanism or software is completely effective. At the same time, CHIPA results in blocking a large segment of constitutionally protected speech to adults as well as minors. Since there are less restrictive alternatives, CHIPA is constitutionally infirm.

The First Amendment is part of the foundation of our society and a bedrock of our principles. Emasculating the First Amendment in the name of protecting children only teaches our children that principles are elastic and suggests to them that when those principles become inconvenient, they should be discarded. Such a lesson leaves a child's moral compass spinning. "Indeed, perhaps we do the minors in this country harm if First Amendment protections, which they will with age inherit fully, are chipped away in the name of their protection."[35]

We can, and must, protect our founding principles as well as our children. It is not an "either-or" situation. With thoughtful consideration, both can be achieved.

Additional Materials:

ACLU Complaint http://www.aclu.org/court/multnomah.pdf

Blind Ballots: Web Sites of U.S. Political Candidates Censored by Censorware, November 7, 2000 http://www.peacefire.org/blind-ballots/

Filtering Programs Block Candidate Sites, November 8, 2000 (verifying results of "Blind Ballots" report on CyberPatrol) http://www.zdnet.com/zdnn/stories/news/0,4586,2651471,00.html

Amnesty Intercepted: Global human rights groups blocked by Web censoring software, December 12, 2000 http://www.peacefire.org/amnesty-intercepted/

Study of Average Error Rates for Censorware Programs, October 23, 2000 http://www.peacefire.org/error-rates/

COPA Commission Report, October 20, 2000 http://www.copacommission.org/report/

Consumer Reports, March 1, 2001, Digital Chaperones http://www.consumerreports.org/Special/ConsumerInterest/Reports/0103fil0.html

Footnotes

[1] Marc Rotenberg is the Director of the Electronic Privacy Information Center (EPIC) in Washington, D.C. The quote is found at: http://www.peacefire.org/info/about-peacefire.shtml

[2] Peacefire.org was created in August 1996 to represent the interests of people under 18 in the debate over freedom of speech on the Internet. It has been an active opponent of mandatory blocking software.

[3] National Telecommunications and Information Administration, *Falling Through the Net: Toward Digital Inclusion,* October 2000

[4] *Reno v. ACLU,* 521 U.S. 844 (1997)(Reno I)

[5] *Id.* at 871

[6] *See, e.g., Reno v. ACLU,* 521 U.S. 844, 874 (1997) ("Reno I"); *Board of Education v. Pico,* 457 U.S. 853, 867-68 (1982); *Tinker v. Des Moines Indep. Community Sch. Dist.,* 393 U.S. 503, 511 (1969); *Campbell v. St. Tammany Parish Sch. Bd.,* 64 F.3d 184, 190 (5th Cir. 1995).

[7] 521 U.S. 844 (1997) ("Reno I")

[8] *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382 (1992); *see also Regan v. Time, Inc.,* 468 U.S. 641 (1984)

[9] *Turner Broadcasting System v. Federal Communications Commission,* 114 S.Ct. 2445 (1994).

[10] *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 231 (1987)
[11] *Sable Communications of California, Inc. v. FCC,* 492 U.S. 115, 126 (1989)
[12] *Elrod v. Burns,* 427 U.S. 347, 362 (1976)
[13] *Butler v Michigan,* 352 U.S. 380, 383 (1957)
[14] Communications Decency Act of 1996. 47 U.S.C. § 223
[15] *Reno I.* at 878
[16] *Id.* at 875
[17] See, e.g., FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 225-29 (1990); Freedman v. Maryland, 380 U.S. 51, 58 (1965).
[18] *Miller v. California,* 413 U.S. 15 (1973).
[19] This is an important requirement the Government overlooked in its enactment of the Communications Decency Act (CDA). In *Reno v. ACLU,* 521 U.S. 844 (1997)(Reno I), the Government argued the statute was not vague because it parroted one of the *Miller* prongs (the material "in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs."). The Court disagreed, noting that the second prong of *Miller* contained a critical element omitted from the CDA: that the proscribed material be "specifically defined by the applicable state law." The Court also noted the CDA went beyond *Miller's* application to sexual conduct to include "excretory activities" as well as "organs" of both a sexual and excretory nature. Finally, the Court concluded that "just because a definition including three limitations is not vague, it does not follow that one of those limitations, standing by itself, is not vague."
[20] *Mainstream Loudoun v. Loudoun County Library,* 24 F.Supp. 2d 552 (E.D. Va. 1998) (Mainstream Loudoun II).
[21] *Mainstream Loudoun II,* 24 F. Supp. 2d at 569.
[22] Id.
[23] *Grayned v. City of Rockford,* 408 U.S. 104, 108 1972)
[24] *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 499 (1982)
[25] *NAACP v. Button,* 371 U.S. 415, 433 (1963)
[26] *Grayned,* 408 U.S. at 108-109
[27] *Smith v. Grayned,* 415 U.S. 566, 578 (1974)
[28] *Id.*
[29] *Baggett v. Bullitt,* 377 U.S. 360, 372 (1964)
[30] *See Talley v. California,* 362 U.S. 60 (1960); *McIntyre v. Ohio Elections Commission,* 115 S.Ct. 1511 (1995); *ACLU v. Johnson,* 4 F.Supp.2d 1029 (D.N.M. 1998); *ACLU v. Miller,* 977 F.Supp. 1228 (N.D.Ga. 1997)
[31] No. 99-603, February 28, 2001. The decision is available at: http://laws.findlaw.com/us/000/99-603.html
[32] *See, for example, Rosenberger v. Rector and Visitors of the University of Virginia,* 515 U.S. 819 (1995). There, the Court "reaffirmed the requirement of viewpoint neutrality in the Government's provision of financial benefits."
[33] *National Endowment for the Arts v. Finley,* 524 U.S. 569 (1998)
[34] *Id.* at 588
[35] ACLU v. Reno, 31 F.Supp.2d 473 (E.D. Pa. 1999)

Mr. UPTON. Mr. Taylor.

STATEMENT OF BRUCE A. TAYLOR, PRESIDENT AND CHIEF COUNSEL, NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES

Mr. TAYLOR. Mr. Chairman, thank you. My name is Bruce Taylor, and I am President and Chief Counsel of the National Law Center for Children and Families, and we have been involved with helping and advising, and even actually writing some of the briefs for the Members of Congress who supported both the Communications Decency Act and the Child On-Line Protection Act, CDA and COPA.

In both of those instances, the Members of Congress who passed that legislation, as was done here with the CHIPA, narrowed the scope of the law so that they would more adequately apply to the Internet, as opposed to the way that obscenity, and child pornography, and indecency laws apply to broadcasting or street crimes for obscenity or child pornography.

The same was done here with CHIPA. Some of the problems that have been identified by the ACLU, or the American Library Association against this Act, CHIPA, are that they do not want to have any regulations.

But the alternative to that is that one of the things that everyone who uses the Internet knows is that there is a lot of hardcore por-

nography and child pornography on the worldwide web pages that are run by the pornography syndicates, and that are on the UseNet News Groups that are posted by people all over the world to put both obscenity and child pornography there.

And then in the chat rooms, where these people who go into there, many of whom are teenagers, or pedophiles, post pictures for the rest of the people in the chat room. So if no action is taken by the library to try to filter out access to that, then all adults and children can go into public libraries or in the school terminals and get illegal, hardcore pornography and child pornography, which is a felony even to possess.

So the alternative to that is what are we going to do about this free availability of all of this kind of pornography, and one of the things that Congress said to do with CHIPA is that we are going to ask two things of libraries and schools.

One, you have to try to use a filter to block out whatever you think—you as the administrators of the school or library think—would fit within those categories of illegal child porn, obscenity, or what is obscene for minors.

Now, the term, "harmful to minors," is a legal term of art, just like obscenity is, and just like child pornography is. Child pornography is not any picture of a kid that you think is dirty, or obscenity is not just something that people think is offensive.

And what is harmful to minors is not what somebody thinks will hurt a child psychologically or morally. Those are legal terms that are limited to a type of pornography. CHIPA gives the discretion for the local library or school to tell their filter to block a certain kind of category, and it can work with the filter company, and decide for themselves.

And so many of the types of abuses that are being hypothetically or even in the past have been examples of overblocking or underblocking are examples that the filter company and the library of the school can work together not to see happen in reality.

Because even though there may be a few sites, one way or the other—and like he said, there were 3, or 4, or 5 porn sites that came through. That may be better than 100,000 known hard core porn sites. But the Act itself gives the total discretion to the school to decide with their filter company what they are going to block.

And most of the examples that they use are when using a filter, just like Consumer Reports did, that is set at the parental control level that you would use if you were a parent trying to put a filter on your home terminal to protect a 7, or 8, or 10 year old kid.

You don't have to use that setting on a filter, and filter companies have various categories of material that they block; from hard core pornography to soft core, to nudity, to hate speech, to violence, to drugs, to gambling, to offense speech, and a lot of other categories.

And if you enable all of those categories on the most conservative setting, sure it is going to block a lot of material that might be sexually oriented, but not obscene for children, and not obscene for adults, and not child porn.

Most of the filter companies also have settings that are much more liberal that say that we are only going to block that which we have reviewed to be hard core pornography, sexually explicit

pictures of children, and the kind of soft core pornography that you would find in Playboy, Penthouse, and those kinds of magazines that are a crime to sell to a child at a local convenience store.

So the filters themselves have not been adequately tested because they have not been indocketed at the settings that would be appropriate for a library or a school. Certainly a library or a school for grade school kids can be set more conservatively than for high school, and a library may say I am only going to block the most explicit, penetration visible, hard core porn, and only those sexually explicit pictures of kids, and only that kind of soft core porn that you could not sell to the kid at the local corner drug store. That is the kind of pornography that I am going to have my filter do.

The other purpose of CHIPA is to do what Congress has been trying to do with all of the money that it has put into the Internet for the past many years. We have put billions of dollars into the development of the Internet, and we are putting $3 billion into wiring up every school and public library in the United States.

We want to see libraries and schools become the next centuries place for people to get information. The alternative to having pedophiles go into libraries and downloading child porn because they know that when a search warrant comes with the police department, and they find out it is a library instead of a pedophiles home, that's why they do there.

Adult porn addicts can go, instead of the local adult bookstore where they have to buy it, to the public library. And libraries don't like that either I'm sure, or they shouldn't, but at least Congress and the State Legislatures don't have to have that if it is State subsidized monies.

But that kind of money being put into the development of the Internet is going to help hopefully improvement the quality of filters so that next year when you say when one library told their filter to block a certain kind of material and it did, and then another library told their filter to block another kind of material and it did, the filter companies are going to be able to develop the technology with the help of this law so that it will carry both functions and duties equally well.

So the criticisms of filters, and, oh, they don't work. Well, filters use the same search technology that we use to find information on the Internet. The Internet can do a lot of am amazing things, and for them to say—I think it is absurd for them to say that the Internet can do anything that you want.

It has all this information, and billions of web pages, and you can find anything that you want, but the only thing that it can do is bring you information, and the only thing it can't do is block it out, because it is the same technology that filters as does for the search technology, and that is one of the main purposes of this bill.

If we don't give this an experiment to say that we are going to put this experiment into the hands of the toughest critics that the country could find, meaning very—you know, someone more liberal, and educated, and techno-savvy, librarians and school administrators, they are going to be the best ones to say here is where the filters worked, and here is where they failed.

And when they report back to Congress, we will have a better way than just guessing on what the bad things that are going to

happen. But one thing that I think is going to be for sure is that people will be able to use the terminals.

[The prepared statement of Bruce A. Taylor follows:]

PREPARED STATEMENT OF BRUCE A. TAYLOR, PRESIDENT AND CHIEF COUNSEL, NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES

NLC STATEMENT OF LEGAL ARGUMENTS IN SUPPORT OF THE CONSTITUTIONALITY OF CIPA, THE CHILDREN'S INTERNET PROTECTION ACT OF 2000

1. As a funding incentive, CIPA can require schools and libraries that accept federal subsidies for discount Internet services (*i.e.*, "e-rate" funds) to use filters to attempt to restrict access by minors under 17 to that kind of pornography that is legally "Harmful To Minors", as well as to restrict minors' access to visual pornography that is legally "Obscene" or "Child Pornography", and thus illegal even for adults.

A. CIPA only applies to grade schools and high schools, not colleges.

B. CIPA only applies to public libraries that accept federal Internet subsidies, not college libraries or private libraries that do not accept federal funds.

C. Internet subsidies are not an "entitlement" program for libraries and schools. Conversely, federal subsidies for free Internet access in public schools and libraries are an important factor in the intent of Congress to make Internet access safe and educational for minor students in their schools and for minor children who are entitled to use public libraries without being exposed to illegal and harmful pornography or exposed to adults who are viewing such pornography on publicly accessible computer terminals in taxpayer supported libraries.

2. CIPA provides local determination of what the filter will attempt to block by allowing the receiving school or library to decide what could constitute the three types of pornography that their filtering software attempts to block, guided by the scope of the legal definitions used in federal law:

A. "Harmful To Minors" (as defined in CIPA to be "obscene for minors"); and

B. "Obscenity" (as limited to visual images in 18 U.S.C. § 1460 and defined by the Supreme Court, *see Miller v. California,* 413 U.S. 15, at 24-25 (1973), *Smith v. United States,* 431 U.S. 291, at 300-02, 309 (1977), *Pope v. Illinois,* 481 U.S. 497, at 500-01 (1987), providing the constitutional criteria for federal and state laws and courts); and

C. "Child Pornography" (as defined in 18 U.S.C. § 2256 (8), *i.e.*, visual depictions that are or appear to be of actual minors under age 18 engaging in "sexually explicit conduct").

3. These three classes of pornography are unprotected under the First Amendment for minors and obscenity and child pornography are unprotected for adults, including on the Internet. The courts have defined these categories of unprotected pornography as "legal terms of art" so as to limit them to narrow classes of pornographic materials that do not include serious works of literature, art, political speech, or scientific or medical information. No adult has the right to gain access to obscenity or child pornography in a school or public library and no child has a right to access pornography that is "obscene for minors" or "harmful to minors" in those settings and no school or library has any duty to provide access to such materials on Internet terminals.

The three classes of pornography that Congress requires schools and libraries to attempt to filter out of their Internet access in exchange for the massive federal subsidies that make such Internet access available to all students and members of the public in libraries are:

A. Child Pornography: Consists of an unprotected visual depiction of a minor child (federal age is under 18) engaged in actual or simulated sexual conduct, including a lewd or lascivious exhibition of the genitals. *See* 18 U.S.C. § 2256; *New York v. Ferber,* 458 U.S. 747 (1982), Osborne v. Ohio, 495 U.S. 103 (1990), *United States v. X-Citement Video,* Inc., 115 S. Ct. 464 (1994). *See also United States v. Wiegand,* 812 F.2d 1239 (9th Cir. 1987), *cert. denied,* 484 U.S. 856 (1987), *United States v. Knox,* 32 F.3d 733 (3rd Cir. 1994), *cert. denied,* 115 S. Ct. 897 (1995). Note: In 1996, 18 U.S.C. § 2252A was enacted and § 2256 was amended to include "child pornography" that consists of a visual depiction that "is or appears to be" of an actual minor engaging in "sexually explicit conduct". Section 2252A was upheld in *United States v. Hilton,* 167 F.3d 61 (1st Cir. 1999), and *United States v. Acheson,* 195 F.3d 645 (11th Cir. 1999). *But see Free Speech Coalition v. Reno,* 198 F.3d 1083 (9th Cir. 1999) (declaring statute invalid as applied to child pornography that is wholly gen-

erated by means of computer), *cert. granted, sub nom Ashcroft v. Free Speech Coalition* (2001).

B. Obscenity (hard-core adult pornography): "This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment." *Miller v. California,* 413 U.S. 15, 23 (1973). This is true even for "consenting adults." *Paris Adult Theatre v. Slaton,* 413 U.S. 49, 57-59 (1973). "Transmitting obscenity and child pornography, whether via the Internet or other means, is already illegal under federal law for both adults and juveniles." *Reno v. ACLU,* 521 U.S. 844, 117 S.Ct. 2329, at 2347, n. 44 (1997). The "*Miller Test*" can apply to actual or simulated sexual acts and lewd genital exhibitions. *See Miller v. California,* 413 U.S. 15, at 24-25 (1973); *Smith v. United States,* 431 U.S. 291, at 300-02, 309 (1977); *Pope v. Illinois,* 481 U.S. 497, at 500-01 (1987), providing the three-prong constitutional criteria for federal and state laws and court adjudications:

(1) whether the average person, applying contemporary adult community standards, would find that the material, taken as a whole, appeals to a prurient interest in sex (i.e., an erotic, lascivious, abnormal, unhealthy, degrading, shameful, or morbid interest in nudity, sex, or excretion); and
(2) whether the average person, applying contemporary adult community standards, would find that the work depicts or describes, in a patently offensive way, sexual conduct (i.e., "ultimate sexual acts, normal or perverted, actual or simulated;. . . masturbation, excretory functions, and lewd exhibition of the genitals"; and sadomasochistic sexual abuse); and
(3) whether a reasonable person would find that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

C. Pornography Harmful To Minors (soft-core and hard-core pornography): Known as "variable obscenity" or the "*Millerized-Ginsberg Test*" for what is "obscene for minors". *See Ginsberg v. New York,* 390 U.S. 629 (1968); as modified by *Miller, Smith, Pope, supra.* It is illegal to sell, exhibit, or display "HTM/OFM" pornography to minor children, even if the material is not obscene or unlawful for adults. *See also Commonwealth v. American Booksellers Ass'n,* 372 S.E.2d 618 (Va. 1988), followed, *American Booksellers Ass'n v. Commonwealth of Va.,* 882 F.2d 125 (4th Cir. 1989), *Crawford v. Lungren,* 96 F.3d 380 (9th Cir. 1996), *cert. denied,* 117 S. Ct. 1249 (1997). Under CIPA, pornography that is "Harmful To Minors" or "Obscene For Minors" is defined for Internet purposes to mean pornographic visual images ("picture, image, graphic image file, or other visual depiction"), judged in reference to the age group of minors in the intended and probable recipient audience, that could meet the following three prong test:

(1) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion (as judged by the average person, applying contemporary adult community standards with respect to what prurient appeal it would have for minors in the probable or recipient age group of minors); and
(2) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals (as judged by the average person, applying contemporary adult community standards with respect to what would be patently offensive for minors in the probably or recipient age group of minors); and
(3) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors (as judged by a reasonable person with respect to what would have serious value for minors in the intended and probable recipient audience).

4. Congress can also require these federally subsidized schools and libraries to use filters to attempt to restrict adult access to visual images of Obscenity (hard-core pornography) and Child Pornography (sexually explicit images of minors), especially since such pornography is contraband and unprotected even for "consenting adults" and because the transmission or transportation of which by phone lines or common carriers is a felony under existing federal laws (*see* 18 U.S.C. § 1462, smuggling or any common carrier transport of obscenity, even for private use; § 1465, transportation, for sale or distribution, of obscenity across state lines or by any means or facility of interstate or foreign commerce; §§ 2252 & 2252A, transporting, receiving, or possessing child pornography within, into, or out of the United States by any means, including computer; § 1961, *et seq.,* RICO crime for using an enterprise in a pattern of obscenity or child exploitation offenses.

5. The power of Congress to act by tax subsidy incentive is greater than its police power to criminalize or provide civil liability for unprotected conduct. CIPA is not a criminal or civil law and places no restrictions on the citizens or public.

6. Library patrons who are adults are not entitled to access any particular materials of their own choice in a public library or via the Internet and even "consenting

adults" have no First Amendment right to obtain Obscenity or Child Pornography, especially at taxpayer expense in federally supported public libraries or schools. Students or library patrons who are minor children under age 17 are not entitled to access pornography that is "obscene for minors", "obscene" for adults, or child pornography.

7. Congress may encourage children to use Internet computers in schools and libraries by subsidizing the use of pornography filtering technology so that minors will be protected from exposure to such illegal and unprotected images during their educational and entertainment use of the Internet and computer services.

8. This Act requires K-12 schools and public libraries to provide filtered Internet access to minors and patrons, but allows the determinations and delegation of the filter process to be made by local school and library administrative personnel, without federal interference or federal judicial review.

9. CIPA allows for unfiltered Internet use for bona fide research or other lawful purposes and makes those determinations totally within the local administrators' discretion.

10. Congress already granted immunity to libraries and schools, as providers of Internet access, for voluntary actions to restrict access to illegal and objectionable materials, even if the materials are constitutionally protected, as part of the "Good Samaritan" protections in the CDA, 47 U.S.C. § 230(c), so they will be free to accept the e-rate funds and use filters without fear of legal liability or harassment by users, special interest advocacy groups, or even pornographers.

11. CIPA has a future-looking, beneficial purpose of encouraging the development of filter technologies, thus furthering the mass communications and Internet development goals of Congress. By subsidizing Internet facilities in schools and libraries and asking them to employ filter devices to try to restrict pornography from reaching their computer terminals, Congress can create a market for filter programs, foster research & development in the private sector Internet industry for better and more customizable filter devices, and re-evaluate the safety, policies, and performance of such "technology protection measures" in light of the extreme scrutiny and competent review that could be gathered from school and library administrators and Internet access professionals who will be directing and evaluating the filters, even when they personally or philosophically disagree with or oppose the use of such filtering technologies in their institutions. The virulence of their opposition can be the strength of their constructive criticism, as Congress intends.

12. Without CIPA, many libraries and schools would continue to provide unrestricted access by minors and adults to Internet terminals that regularly expose them to illegal and unprotected pornography, though many others will continue to provide filtered Internet access to minor children and reduce the exposure of their students and patrons to harmful pornography. This Act seeks to make all tax supported school and library terminals open, freely accessible, and safe.

13. CIPA does not require subsidized schools or libraries to restrict or filter any other materials other than what they themselves think is Obscene, Child Pornography, or Harmful To Minors. The Act requires no more, but does not interfere, on the other hand, with the local school or library's choice, if they so choose, to try to filter out violence, hate speech, or other dangerous and inappropriate materials under their right to be "Good Samaritans" under the CDA's immunity protection, either for minor children or for adults.

Mr. UPTON. Your time has expired.

Thank you.

Ms. Morgan.

STATEMENT OF LAURA G. MORGAN, LIBRARIAN, CHICAGO PUBLIC LIBRARY

Ms. MORGAN. Good morning. In a speech discussing the urgent need for the Children's Internet Protection Act, Senator John McCain stated the following, "What is happening in schools and libraries all over America in many cases is an unacceptable situation."

My name is Laura Morgan, and I am here today to tell you that unfortunately that the Senator is absolutely correct. As a librarian in the Chicago Public Library's central branch, I am well aware of

the serious consequences of a completely unrestricted Internet access policy.

I sincerely thank the Committee for giving me the opportunity to submit testimony in support of the Children's Internet Protection Act. I also wish to commend the United States Senators and Representatives who have supported this important legislation.

I should also tell you that, of course, since I am criticizing the library's policy that I am not representing the library here, and I also want to say that my criticism should not diminish the many wonderful things that libraries do in this country, particularly the Chicago Public Library.

But that I feel that the problems that are happening cannot be ignored, and need to be talked about. I am concerned about this issue from four different perspectives; as a parent of two children, as a woman, as a citizen, and as a member of the library profession.

As a parent of two daughters, I am very concerned about the children who are accessing pornography on library computers, both intentionally and unintentionally. Due to our library administration's adamant stance against filters, even in the case of computers used by children, this happens far too often.

One example that I had when I worked—I worked at a branch library for a couple of weeks in the month of December to help out, and there was a 9 year old girl who said a completely unsolicited comment to me. She said, you know, it really bothers me when the little boys here look at what she called nasty pictures on the computers.

We supposedly have a policy where we can tell kids to get off of these bad sites, but obviously this is happening. Obviously there is no way that every staff person can watch what every kid is doing, and this is happening definitely at the Chicago Public Library and elsewhere.

Again, I ask you is this something that we want to have happen in our public libraries, when a 9 year old child has to be exposed to this type of material, and as we know, there is a lot of extremely hard pornographic material. We are not talking about very minor material. This is very extreme.

In fact, some of these kids I noticed are very adept at changing or making the screen go blank when you walk by. At this particular branch, I noticed after some of these boys left—and it is usually young boys—I could check or go into the bookmarks and the search history, and very extreme Triple X porn sites had been accessed.

So this is definitely happening. I want to point that out again. As a woman, I am concerned about the porn surfers, who are almost exclusively male, creating a sexually hostile environment, particularly for female staff and patrons.

On the floor where I work—and I am the architectural librarian in the main branch—we have male patrons looking at pornography every day virtually. And they do this sometimes for hours on end.

They will go throughout the building, and this is allowed by our administration. We do not censor the Internet in any way for adults. I also want to say that the fact that the male patrons are

doing this is not a big enough problem to begin with, it does encourage bad behavior by these patrons.

Verbal harassment, even public masturbation has happened, and I don't think it should be a surprise to anyone when you make hard core porn available in a public building that this is not going to happen. I made a complaint at a public board meeting about this, which in-turn has lodged an investigation by the sexual harassment office of the city of Chicago.

They are currently doing an investigation into this matter, and interviewing staff, and I hope that the truth really surfaces about what is going on throughout that system. One of the things again that I am concerned about as a citizen is the whole idea of the illegal material, particularly child pornography.

There was a—Bill Harmoning, who is the chief investigator for hi-tech crimes in Illinois, of the Attorney General's Office, said that it is a well known fact in law enforcement that pedophiles do like to go to public libraries and do this because they cannot be traced.

Again, this is a person in law enforcement saying this. I have also heard from security guards in the Chicago Public Library that people are coming in and surfing through this material. This is a fact.

Again, considering the heinous nature of these kinds of images, I find this simply abominable, and that they are not doing more to stop it. Finally, as a librarian, I am concerned what all of this means for the future of public libraries.

The plain fact remains that public libraries have never been in the business of providing hard core pornography in print, not to mention illegal obscenity and child pornography. The argument that we must provide it now simply because it is available via the uncontrollable medium called the Internet is absurd.

Must we now add X-rated book store to our list of services. Is that what the public library has now become? Filtering opponents often cite acceptable use policies as a solution to the problem. I have become increasing convinced, however, that these policies are not adequate.

And in many ways they are actually more intrusive and subjective than filters are, because it implies that a staff person is watching what people are doing. And in conclusion I just want to say that I am one of those librarians out there that does support the Children's Internet Protection Act.

The American Library Association is giving the impression that all librarians are opposed to this. I do believe that the hierarchy of the association represents a radical view that is not shared by either the majority of librarians or the public. Thank you very much.

[The prepared statement of Laura G. Morgan follows:]

PREPARED STATEMENT OF LAURA G. MORGAN, PUBLIC LIBRARIAN

I. INTRODUCTION

In a speech discussing the urgent need for the Children's Internet Protection Act, Senator John McCain stated the following: "What is happening in schools and li-

braries all over America, in many cases, is an unacceptable situation."[1] My name is Laura G. Morgan, and I am here today to tell you that unfortunately, the Senator is absolutely correct. As a librarian in the Chicago Public Library's central branch, I am well aware of the serious consequences of an unrestricted Internet access policy. I sincerely thank the Committee for giving me the opportunity to submit testimony in support of the Children's Internet Protection Act. I also wish to commend the United States Senators and Representatives who have supported this important legislation.

On March 20, 2001, the American Library Association, the American Civil Liberties Union and others, filed a legal challenge against the Children's Internet Protection Act that became a law in December, 2000. At a press conference, ALA president Nancy Kranich referred to the 61,000 members of the Association and stated that "we are here speaking for all of them today."[2] This statement is troubling because I believe there are many library professionals who do not condone the ALA's legal challenge of CIPA, nor the Association's ideology regarding Internet access in libraries. I am also deeply concerned that many statements by the ALA hierarchy are at best misleading, and at worst, simply not true. I hope that my experiences as a public librarian in an unrestricted Internet access environment will expose the seriousness of this issue and the need for the Children's Internet Protection Act. I also hope my testimony will encourage you to listen to those who object to CIPA with a great deal of skepticism.

II. THE CHICAGO PUBLIC LIBRARY: A CASE STUDY

The Chicago Public Library's central building where I work, as well as its seventy-eight branches, are a tremendous asset to the city of Chicago. Mayor Richard Daley and Library Commissioner Mary Dempsey have been tireless advocates for improving library services for all of Chicago's citizens. Since 1989, I have held the position of architecture librarian, as well as arts periodicals librarian, in the Visual and Performing Arts Division of the Harold Washington Library Center. I am truly grateful that I have had the opportunity to work in one of the finest public libraries in the United States, if not the world. It is because of this deep regard and commitment that I have for the Chicago Public Library and the library profession that I have chosen to speak out publicly against our Internet policy. While my criticism of unrestricted Internet access should not diminish the many positive aspects of libraries, I feel that the negative consequences of such a policy can not, nor should not, be ignored.

Like the official stance of American Library Association, the Chicago Public Library administration is firmly opposed to Internet filters, even on computers located in children's departments. The Chicago Public Library policy states:

> The Chicago Public Library provides public access to the Internet as a way of enhancing its existing collections with electronic resources from information networks around the world.
>
> While the Internet provides many valuable sources of information, users are reminded that some information on the Internet may not be accurate, complete, current, or confidential. The Library has no control over the information on the Internet, and cannot be held responsible for its content.
>
> It is not within the purview of the Library to monitor access to any resource for any segment of the population. The Circulation Policy of the Chicago Public Library states:
>
> "The Library makes its collections available to all users without regard to age, sex, race, national origin, physical disability, or sexual orientation."
>
> The responsibility for use of library resources by children thirteen (13) and under rests with the parent or legal guardian.

The Chicago Public Library adheres to the principles expressed in the following documents of the American Library Association (http://www.ala.org/):

- Library Bill of Rights (http://www.ala.org/work/freedom/lbr.html)
- Free Access to Libraries for Minors (http://www.ala.org/alaorg/oif/free—min.html)
- Freedom to Read (http://www.ala.org/alaorg/oif/freeread.html)
- Freedom to View (http://www.ala.org/alaorg/oif/freedomtoview.html)[3]

In an article entitled "Porn Again" in the *Minneapolis/St. Paul City Pages,* the Chicago Public Library Internet policy is summarized as follows:

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[1] U.S., Congress, Senate, Senator John McCain speaking in support of Amendment no. 3610, 27 June 2000.

[2] http://www.ala.org/cipa/kranichremarks.html

[3] http://www.chipublib.org/003cpl/internet/policy.html

> "In the children's department, librarians keep an eye on what kids are looking at and redirect them if they seem to be looking at inappropriate Web sites, says library commissioner Mary Dempsey. **But in the adult areas, patrons are free to view anything, including pornographic sites.** "Adults have a right to look at those things. Adult terminals have privacy screens. If they want to look at it, that's fine. But you don't have to look at it, and I don't have to look at it," Dempsey says. "People are free to surf. We're a big city, with 3 million people. What is objectionable to one person is not necessarily objectionable to another."[4]

The major problem with such a policy is obvious. The administration is giving its tacit approval to patrons who wish to view and print a vast array of hard core pornographic material that is normally associated with an x-rated book store or peep show. There is no precedent for this in public libraries, since traditionally this type of material was never purchased in print form. Specifically, what I mean by "this type of material," are sexual images created strictly for the sake of sexual arousal and gratification. The easy availability of pornography on the Internet at the Chicago Public Library and in libraries across the nation has great potential for negatively affecting the staff, patrons (especially children), and the overall environment. The administration claims that the "privacy screens" solve this problem, however, the screens do not completely block the view, nor the negative behavior that is sometimes associated with the habitual porn surfers. In my opinion, the Chicago Public Library administration did not sufficiently consider all of the legal and ethical ramifications of the chosen Internet policy. I am deeply concerned about this issue from four different personal perspectives: as a mother, as a woman, as a citizen, and as a member of the library profession.

III. CHILDREN AND INTERNET PORNOGRAPHY

As a mother, I am very concerned about children who access or are exposed to pornography on library computers, both intentionally and unintentionally. Due to the library administration's adamant stance against filters, even in the case of computers used by children, this happens far too often. Prior to the spring of 2000, I had not given much serious thought to the issue of children accessing pornography on the Internet, primarily because, as of that date, I had not witnessed it on the eighth floor where I work. What focused my attention was hearing from staff in the Central Library's Children's Department that children were occasionally accessing pornographic and violent web sites on the twelve new unfiltered Internet computers donated by the Bill and Melinda Gates Foundation. One of the more extreme examples involved a child caught viewing a downloaded porn video displaying a woman performing oral sex on a man. I was extremely disturbed by this revelation because I had assumed that the computers in the children's departments would be filtered. In other words, I had assumed that the library administration would have chosen to make every effort to block pornographic web sites from being accessed in the first place. To their credit, the children's staff tell the kids to get off those sites when they see it happen, but to me the damage has already been done. Whether or not children are deliberately accessing these sites or stumbling upon them by accident is not really the point, either. When it happens, the images are there for anyone in the vicinity of the computer screen to see. As an arts librarian and one who has a graduate degree in art history, I can tell you that images are often much more powerful than words. The Crimes Against Children Research Center's recent study entitled *Online Victimization: A Report on the Nation's Youth* corroborates this point. The study revealed that a significant number of young people who are exposed to unwanted sexual material on the Internet are deeply disturbed by it. Furthermore, the report's authors ask the following questions. "What if a quarter of all young visitors to the local supermarket were exposed to unwanted pornography? Would this be tolerated? We consider these levels of offensiveness unacceptable in most contexts."[5]

Over the past several months, I have spoken to several Chicago Public library staff members who have described incidents of children under the age of fourteen viewing pornography in children's departments. In defense of their policy, the library administration claims that staff can monitor what kids are doing at all times while they are using the computers. Many staff have told me this is simply not possible. One children's librarian told me that when she is not in the department due

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[4] Kokmen, Leyla, "Porn Again," Minneapolis / St. Paul City Pages, 17 May 2000.

[5] Crimes Against Children Research Center, Online Victimization: A Report on the Nation's Youth, Funded by the U.S. Congress Through a Grant to National Center for Missing & Exploited Children (Washington, D.C.: National Center for Missing & Exploited Children, June 2000), p. 33.

to a day off or lunch, etc., it is a "free for all" in the children's area, and that she often finds porn sites bookmarked on the children's computers upon her return. Another children's librarian commented how a young girl told her that the boys were looking at "bad things" on the computers. I had a similar experience while working at a branch library last December, when a nine year old girl told me that it bothered her when the boys looked at what she called "nasty pictures" on the computers. What kind of a message does that give to a little girl about her local library, the place that is touted as a "safe haven for a safer neighborhood?" At that branch, I also witnessed how adept some of the boys are at hiding what they are doing by changing the screen as someone walks by. After they left the library, I could easily tell by looking at the recent search history and bookmarks that they had accessed extreme XXX porn sites. What I ask all of you today is this: have we as a society become so desensitized that the idea of children accessing hard core pornography in a children's library does not bother us? I sincerely hope this is not the case.

In addition to children under the age of fourteen accessing porn in children's departments, minors under the age of eighteen have been known to access pornography in the subject departments of the central library, as well as on the adult computers in the branches. I have witnessed this myself, as well as hearing from several employees about porn viewing incidents involving teenage boys. A librarian told me that she saw some teens viewing Asian child pornography on the fourth floor of the central library. One extreme example I witnessed was a young teen looking at sado-masochistic images of nude women bound with duct tape over their eyes and mouths. Just last week, I noticed a groups of boys around one of the eighth floor computers soon before we closed. After they left and I went over to shut down the computer, I noticed several hard core porn sites were left open. Another group of teen boys once left some print-outs by the computer of a porn site that boasted "Young Teens from Holland." I believe it is obvious that many patrons, and in particular teenage boys, deliberately seek out porn on Internet computers in libraries. This will continue to be true regardless of how many ALA touted "educational programs" or "acceptable use policies" are in place.

IV. INTERNET PORNOGRAPHY AND THE CREATION OF A SEXUALLY HOSTILE ENVIRONMENT

As a woman, I am concerned about the porn surfers (who are almost exclusively male) creating a sexually hostile environment, particularly for female staff and patrons. Almost every day on the floor where I work, I see male patrons viewing and sometimes printing pornography. Security guards have told me that some of the men surf for XXX porn for hours on end, by going from floor to floor. I was recently told that the porn surfers now even frequent our ninth floor Special Collections Reading Room, where one staff member jokingly refers to these men as "Internet scholars." In many cases, therefore, the Internet computers at the Chicago Public Library become peep show booths. If the fact that male patrons are allowed to do this is not bad enough, consider for a moment the behavior that it encourages including harassment and public masturbation. I have spoken to numerous staff members who have experienced these kinds of incidents. One employee told me how a male patron had pulled up an image of a sex act and said to her "can you do this?" Several employees have experienced porn images being left intentionally on computer screens. Other clever patrons have figured out how to change the computer wallpaper to porn images. Some patrons have been known to intentionally call staff over to "fix their computer," only to find that a porn image is on the screen. In the worst case scenarios of porn viewing and accompanying behavior, male patrons have been known to masturbate through their clothes, put their hands in their pants, and sometimes even expose themselves. Additionally, a library security guard told me that he often finds porn print-outs in the men's restrooms.

Not surprisingly, patrons have also been offended by these conditions. A woman told me a few months ago how it made her uncomfortable that a male patron was viewing and printing "dirty pictures" on the computer next to her. I heard a similar story of a female patron on our seventh floor who was shocked this was allowed. A recent incident on our fourth floor involved two patrons signing up for time on an Internet computer, only to leave quickly upon realizing the computer directly next to them was being used by a porn surfer. A third floor librarian told me of a female patron leaving in disgust for the same reason. It would appear that the library administration is more concerned about protecting the rights of the porn surfers over everyone else!

At a library board meeting on September 19, 2000, I spoke out about these conditions, and mentioned the phrase "sexually hostile work environment" in this context. In response, I was asked to speak to attorneys in the City of Chicago's Sexual

Harassment Office, which is part of the City's Department of Personnel. It is interesting to note that complaints by staff regarding Internet pornography had been routinely ignored or brushed off prior to this date. It was not until I made a public complaint for anyone to finally take this issue seriously and contact the City's Sexual Harassment Office. A positive result of my three and a half hour meeting with the attorneys on December 1, 2000 was their decision to commence a full scale investigation into how Internet pornography is affecting the environment at the Chicago Public Library. At the very least, I believe this is a step in the right direction. Considering that the corporate world is taking the issue of Internet pornography very seriously in light of sexual harassment lawsuits, I am pleased that the City of Chicago is looking into the matter. I recently spoke to one of the attorneys who confirmed they are still in the process of interviewing employees and expect to complete the investigation within the next few months. Once they complete their report, they will give it to the City's Law Department, who will in turn, make any necessary decisions.

V. ILLEGAL OBSCENITY AND CHILD PORNOGRAPHY

As a citizen, I am concerned about patrons who access illegal material, in particular, child pornography. In a hearing I attended last September, Bill Harmening, an investigator of high tech crimes in the Illinois Attorney General's office stated that "it is common knowledge in the business of pedophiles and traders of child pornography to go to your public library and download it because it's there."[6] Although he was not speaking specifically about the Chicago Public Library, I have heard accounts by guards and staff that patrons are accessing child pornography on library computers on occasion. Considering the heinous nature of these kinds of images, I find this simply abominable. In addition, many XXX porn sites qualify as illegal under Illinois obscenity law, and thereby are indefensible on First Amendment grounds for anyone.

VI. PORNOGRAPHY AT YOUR LIBRARY

As a librarian, I am concerned about what all of this means for the future of public libraries. The plain fact remains that public libraries have never been in the business of providing pornography in print, not to mention illegal obscenity and child pornography. The argument that we must provide it now simply because it is available via the "uncontrollable" medium called the Internet is absurd. Must we now add "x-rated bookstore" to our list of services? Is that what the "public library" has become? Think about that, and what that says about the library as a public institution. Regardless of what people think of pornography on a philosophical level, I believe that most Americans would agree that viewing and printing it in a public library building is highly inappropriate. The library administrators who prohibit porn surfing often claim that their "acceptable use policies" are a solution to the problem. Such a policy would certainly deter some of the porn surfers at the Chicago Public Library, but I have become increasingly convinced, that these policies are not adequate. In addition, such "tap on the shoulder" policies are much more intrusive and subjective than filters, because they imply that library staff are watching what patrons are viewing on the computers, all the while making inconsistent individual judgments about site content.

VII. INTERNET PORNOGRAPHY IN LIBRARIES: A NATIONWIDE PROBLEM

In his report entitled *Dangerous Access, 2000 Edition: Uncovering Internet Pornography in America's Libraries,* former librarian David Burt documented numerous cases of children accessing pornography, sexual harassment, adults exposing children to pornography, patrons accessing illegal material including child pornography, and so on, in libraries across the country.[7] He collected the data by making Freedom of Information Act requests to libraries for their Internet logs, incident reports, and other data pertaining to Internet use. As expected, the American Library Association discouraged libraries from complying with Mr. Burt's requests, thereby resulting in a relatively small return rate. The Chicago Public Library, was in fact, one of the libraries that refused his FOIA request. Many people have speculated that the ALA and many libraries did not want to comply because they were wary (for good reason) of this kind of negative information becoming publicly known. In my opinion, it is very obvious that there is indeed something to "hide."

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[6] Illinois House Republican Hearing on House Bill 1812, Marion, Illinois, September 7, 2000.

[7] Burt, David, Dangerous Access, 2000 Edition: Uncovering Internet Pornography in America's Libraries (Washington, D.C.: Family Research Council, 2000).

There has been increasing media coverage of problems relating to Internet pornography in libraries across the United States. Last year, a major story broke surrounding the unrestricted Internet access policy at the Minneapolis Public Library. Several courageous employees spoke out about the egregious conditions there, and twelve ultimately filed a charge of a sexually hostile work environment with the U.S. Equal Employment Opportunity Commission.[8] Even though conditions improved once the administration adopted an acceptable use policy, librarian Wendy Adamson recently informed me that some patrons still attempt to break the rules and surf for pornography. Another library porn news story involves the 21 branches of the Sno-Isle Regional Library System in the state of Washington. As reported in the American Library Association's online news, "Councilman Dan Anderson successfully argued for a council resolution earlier this month that asks the library to amend its Internet policy to comply with the Children's Internet Protect Act, to be phased in beginning April 20." Several citizens have voiced complaints regarding adults and children accessing pornography on the library's computers.[9] Another recent news story described how the Camden County, New Jersey Library System decided to filter every computer due to problems relating to Internet pornography.[10]

VIII. DECONSTRUCTING THE ANTI-FILTERING ARGUMENTS OF THE AMERICAN LIBRARY ASSOCIATION

I am well aware of the American Library Association's many arguments against filters in public libraries and public schools, even in the case of children's departments. At a few sessions I attended at the ALA conference in Chicago in July 2000, these points were raised repeatedly. As the *Wall Street Journal* stated in a editorial in September, 1999, however, the ALA's ideology "makes no room for common sense."[11] One of the Association's primary arguments is that libraries simply make Internet access available and that parents hold the sole responsibility of supervising their children when using the Internet. What this statement does not take into account are the many responsible parents who do supervise their children but who have no control over the adult or unsupervised kid accessing a porn site on the computer next to them. Additionally, by the time a child is of a certain age, it is neither realistic nor possible to supervise one's children 24 hours a day. In a speech advocating the mandated use of filters on tax-funded computers, Senator John McCain stated that "Parents, taxpayers, deserve to have a realistic faith that, when they entrust their children to our nation's schools and libraries, that this trust will not be betrayed."[12]

A second ALA argument against filtering of any kind, is that defending the right of a patron to access a hard core pornography web site is no different than defending the right of a patron to access controversial books, music, or videos from library collections. The Visual and Performing Arts Division in which I work does, in fact, include books on a handful of artists whose body of work includes pieces considered controversial. All were carefully selected by librarians because of the artists' prominence in the established art world. Most of these books are kept in the closed reference stacks and patrons must leave an I.D. to use them in the library. I think there is an *obvious* difference between these relative few art books owned by our department and the thousands of web sites that feature everything from bestiality to child pornography. If these sites had print equivalents, I can tell you with certainty that the Chicago Public Library would never buy them. When filtering advocate and librarian David Burt offered a free subscription to *Hustler* magazine to any public library to prove this point, he had no takers. In a *Chicago Sun Times* editorial regarding Internet access in public schools and Illinois House Bill 1812, writer Dennis Byrne adds, "might I suggest that if school administrators and teachers stocked school bookshelves and libraries with the materials available unfiltered on the Internet, parents would consider a public lynching."[13] Why then does the American Library Association and some library administrators treat the Internet as an exception to traditional collection development policies?

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[8] Oder, Norm, "Minneapolis PL Modifies Net Policy," Library Journal, June 1, 2000, pp. 15-16.

[9] http://www.ala.org/alonline/news/2001/010402.html

[10] "Philadelphia-Area Library Found Internet Filters Far From Simple," The Philadelphia Inquirer, 8 March 2001.

[11] "Dr. Laura's Theme," Wall Street Journal, 3 September 1999, p. W15.

[12] U.S., Congress, Senate, Senator John McCain speaking in support of Amendment no. 3610, 27 June 2000.

[13] Byrne, Dennis, "Parents Need Help in Fight With Pop Culture," Chicago Sun Times, 23 August 2000, p. 53.

A third argument is that filters don't work. While I do not propose to be an expert on filters, I have spoken to librarians who work in libraries with filters on children's computers and even some with filters on all computers. Everyone knows that no filter claims to be or is one hundred percent effective, but the librarians who have real experience with them tell me they suit their purpose quite well. One library administrator told me that the odds of accessing an inappropriate site with a filter on is about "as likely as winning the lottery." The ALA claims that filters give parents a "false sense of security." As a parent, I can tell you that I would be quite happy with the odds that the administrator mentioned. In addition, the ALA's favorite example of filters blocking most of the web sites about breast cancer because of the word breast are simply not true.

A fourth argument against filtering or even acceptable use policies, which prohibit patrons from accessing hard core pornography, is that only a minority of users actually access objectionable web sites. My response to this is who is to say how much is too much or too little? Should the viewing of hard core pornography by children and adults in public libraries be tolerated on any level? In January 2000, the *Wall Street Journal* quoted Sarah Long, the previous past president of the ALA, as saying that "the American Library Association has never endorsed the viewing of pornography by children or adults."[14] The editorial continues by saying that the "problem is, it's never endorsed their not viewing it, either. Quite the opposite." The plain truth remains that unrestricted Internet access policies permit numerous instances of porn surfing in libraries across the country. The few examples I have provided represent only a fraction of the actual situations witnessed by me and other staff of the Chicago Public Library. If I had the opportunity to speak to each and every employee, I am certain that everyone would have their own stories to tell. Cumulatively, the numbers and situations would be significant. Then consider the times this must happen on computers with unfiltered Internet access in other Illinois libraries and elsewhere in the United States. While some libraries have acted responsibly and at the very least have installed filters in children's rooms and enforced acceptable use policies for adults, many have not. The hierarchy of the American Library Association and some others in the library profession strongly oppose any state and federal mandates for Internet filtering, most recently exhibited by their legal challenge to the Children's Internet Protection Act. I believe they represent a radical view that is not shared by the majority of librarians or the public. While they will try to marginalize those of us who do not agree with the official ALA party line as right wing extremists, I am proud to say that I have always considered myself a liberal. And in the end, support of the Children's Internet Protection Act is not a matter of left or right, liberal or conservative, but a matter of common sense. It is time for each and every one of us who is concerned about maintaining a safe and welcoming environment for all library users to stand up and make our voices heard.

Mr. UPTON. Thank you.

Ms. Caywood, welcome.

STATEMENT OF CAROLYN A. CAYWOOD, LIBRARIAN, BAYSIDE AREA LIBRARY, VIRGINIA BEACH PUBLIC LIBRARY

Ms. CAYWOOD. Thank you. I appreciate this opportunity to participate in this hearing. My name is Carolyn Caywood. I am the Bayside Branch Librarian in the Virginia Beach Public Library, and I have come to tell you how we have handled the Internet in Virginia Beach, and to answer your questions.

My written testimony will provide more details, and while those details are specific to Virginia Beach, we have borrowed from and compared notes with hundreds of other libraries and schools. So we know that they, too, are working on policies and processes.

Library boards and school boards are finding what meets their community, and States, too. Virginia requires us to have a policy, and I know that some States even require filters.

[14] "Taste—Review & Outlook: X-Rated," Wall Street Journal, 14 January 2000, p. W11.

I want to make four points. The responsibility for making decisions about Internet usage should always be made at the local level within the bounds of the United States Constitution.

Libraries and school boards have this policy and they use it every day. They are the best equipped to make the decisions that best serve their communities. Second, technology cannot substitute for an informed community, effective librarians and teachers, educated families, and trained Internet users.

Third, resources that are devoted to education will be more effective in protecting our children than will be federally mandated filters installed at local expense, especially when that mandate removes the patron's choices.

And, finally, filters do not work the way the CHIPA law needs them to work. I'm sorry, but I have been pronouncing it CHIPA for months. I have confidence in our Nation's libraries and librarians.

Librarians share Congress' concerns underlying the law that children's experiences on the Internet be safe, educational, and rewarding. No profession that I know is more concerned about children's safety, and development, and growth, than librarians.

We have been unfairly maligned and our position has been misconstrued by those who are pursuing a different agenda. Their hype diminishes the concern that every one of the librarians that I know feels for children as we work on difficult policy decisions.

Librarians know as well as anybody else that new technologies can create and exacerbate social issues, and we deal with this. Virginia Beach receives $25,000 from the E-rate. We use filters in four ways. First, we have to go with—I think you would call it KidsNet.

It is a list of selected URLs that are developmentally appropriate to young children, and they can go to only those that we have examined and embedded. Second, we block chat. We agree that chat is not appropriate to library use in our system.

Third, we provide choice on the other Internet terminals. You can choose the one that is unfiltered, and you can choose the one that is filtered according to your needs at the moment.

And the fourth one is that using again the blocking ability, we block everything but our library's catalog on the ones that are devoted the catalog. So we use filters in all of these ways, and yet we would not be in compliance with CHIPA. We would have to really go back to square one.

We went through a 2 year development process, and we would need to repeat that to find a new community solution that complied with the law. I think that CHIPA will have a devastating impact on the ability of library users to access constitutionally protect material. I think that it may increase risks for children whose parents gain a false sense of security if only those things that Mr. Taylor mentioned are blocked.

This is not what parents are thinking when they think that their child is using a filtered computer. I believe that communities must be involved in policy decisionmaking, and while CHIPA permits some specific choices, it doesn't really allow for the kind of policy decisionmaking involvement that we have had in our community.

And it denies local communities the right to determine what approach they want for their children and families. My branch has six public Internet access terminals, in addition to the kids net.

I hope that this hearing will provide us with the first step toward a dialog about how many other ways we have found that really work with our communities to handle Internet access.

[The prepared statement of Carolyn A. Caywood follows:]

PREPARED STATEMENT OF CAROLYN A. CAYWOOD, LIBRARIAN, VIRGINIA BEACH PUBLIC LIBRARY

Thank you for the opportunity to participate in this important hearing today. My name is Carolyn A. Caywood. I am the Bayside Branch Librarian in the Virginia Beach Public Library System. My branch serves a population of 85,000 people and our library system serves a population of about 450,000 people overall. I have been a librarian for over twenty-eight years.

I am also a member of the Freedom to Read Foundation Board of Directors and an active member of the American Library Association (ALA). However, I am here today in my capacity as a library branch manager to share with you our experiences in Virginia Beach libraries, experiences I know to be similar to situations across the country as it relates to libraries and filtering and the implications of the Children's Internet Protection Act (CIPA) enacted in the last Congress.

As you know, this legislation requires the installation and use by schools and libraries of technology that filters or blocks Internet access to various types of images on all computers as a condition of eligibility for E-Rate discounts or certain technology funding under the Library Services and Technology Act (LSTA) and the Elementary and Secondary Education Act (ESEA).

I will leave the discussion of the legal and Constitutional issues to the attorneys. We are all waiting for the results of the litigation recently initiated by ALA and others. And, we are all waiting for the promulgation of rules by the Federal Communications Commission (FCC), and guidance by the Institute of Museum and Library Services (IMLS) and the Department of Education to see how the law may be implemented.

The Virginia Beach Public Library System, a department of the City of Virginia Beach, has developed and implemented its Internet use policies. While the details are unique to us, our story is similar to those from hundreds and hundreds of other libraries in the country. And, the story is comparable also to the K-12 public and private schools. Communities across the country are already addressing the issues raised by the Internet. Library boards and school boards have already grappled with and developed policies and networks that meet the needs of their communities. Some states, including my state of Virginia, have their own rules requiring Internet use policies. A few states require filters of some sort.

I want to make the following points with you in this testimony:

- Responsibility for making decisions about Internet usage policies and procedures should always be made at the local level within the bounds of the Constitution. Library and school boards and their communities have the responsibility, which they are already exercising everyday. They are best equipped to make decisions based upon the needs, values and resources in their respective communities;
- Technology cannot substitute for an informed community, effective librarians and teachers, educated families and trained Internet users;
- Resources devoted to education are more effective in the long run to protect our children than having Federally mandated filters installed at local expense, especially when that mandate removes options for patron choices about using filters or not.

For the record: I want to applaud our Nation's libraries and librarians. All librarians share the Congress' concerns underlying this law—that children's experiences on the Internet be safe, educational and rewarding. No profession is more vitally concerned about children and their safety, development and growth than our Nation's librarians. We have been unfairly maligned and our position misconstrued by those with a different political agenda. Their hype diminishes the concerns that all of us have for our children as we all struggle to make these difficult public policy decisions together. Librarians know as well as anyone else, that, as new technologies proliferate, it is critical that we balance the extraordinary value they bring to communications and lifelong learning with responsible, safe use and careful guidance through education and training.

The core belief of libraries is that knowledge is good. With it, people can take charge of their future. Librarians take seriously the First Amendment limits on government, of which we are a part, and we promote intellectual freedom because that's the only environment in which learning can thrive. Libraries are not prescriptive, we do not endorse the contents of our collections or judge the information people

seek. Librarians cannot nor should not substitute for parents. These important Internet decisions must be made by parents.

Libraries are tax supported institutions generally providing no-fee public services. We ensure that each person has the opportunity to learn and discover new ideas and different opinions. In recent years, that has meant adding Internet access to prevent a Digital Divide between those with access to electronic information and those without. Not having Internet access is becoming a form of social marginalization, but even owning a computer is not enough if a person lacks the skill to use it effectively. The skill divide is as important as the economic divide.

I believe the Virginia Beach situation, which is typical of what is happening across the country, supports how these responsibilities are taken fully and seriously. On the issue of E-rate and filtering in Virginia Beach: we get $25,000 from the E-rate. We use filters in three ways: 1) to present the best web sites for kids; 2) to block chat rooms; and 3) to provide patron options for Internet searches in the library branches.

For example, on the "Kidsnet" pages of our web site, our library system uses filters to block everything but the URLs that have been selected by our library staff. In other words, ALL other URLs are blocked. Children going to the "Kidsnet" site find only materials our librarians believe is age appropriate and developmentally appropriate materials.

We provide ongoing classes and training sessions in the library branches for different age groups, including family sessions. We provide an online list of links for parents to learn more about using the Internet, preferably in conjunction with their children. This list includes interactive exercises that parent and children can do together to find out and discuss questions about privacy, using the Internet, safe web surfing, and so forth. I encourage you to review our web site: http://www.virginia-beach.va.us/dept/library/families/kid.html

We have had, and continue to have, open, broad and ongoing discussion within our community about Internet use and when and how we use filtering. We will continue to apply for the E-rate but we cannot break faith with our community and the policies it has established through public dialogue, education, and local decision making. The relationship between the community and the library in the development of guidelines for access to the Internet, is extremely important in Virginia Beach and elsewhere.

As a practicing librarian in a community that has developed a policy for addressing children's Internet use, I believe that CIPA will have a devastating impact on the ability of all library users to access valuable constitutionally protected material. Equally, if not more importantly, CIPA will actually increase the risks for many children because filters give parents a false sense of security. What is more, it strips library boards and local communities of local control and decision making and will impose extraordinary financial and administrative burdens on libraries and schools.

As a branch librarian in Virginia Beach, I have had direct experience with the development and adoption of policies for library patron access to the Internet. In my experience, the role of the community in helping to inform and shape a solution is absolutely critical. My concern with the law is that, while it permits some discretion for local officials to determine what material is "deemed to be harmful to minors" and what software to use to block content, it denies local communities the opportunity to determine what approach will best serve children in these communities in dealing with challenging content.

It is not just that one solution doesn't fit all communities. It is also that a Federal mandate on a matter so closely tied to local norms and values is, in my view, counterproductive and even harmful. The law may not only discourage communities from doing the hard work to reach their own solutions and to educate themselves, it also lacks the legitimacy necessary to foster broad community support.

While no one approach to Internet safety will satisfy everyone in the community, I believe it is possible, indeed necessary, to work with the community to fashion a "bottom up" approach that respects community values, to address core concerns and to provide useful solutions. Not surprisingly, local decision-making processes vary significantly and the solutions are extremely diverse. But what they have in common is involvement of the community, understanding of local norms and values, knowledge of practices that take into account the information needs of children and teens, and a general good faith desire to work together to find a solution that respects the diverse perspectives in the community. Libraries are educating and encouraging parents and children to work together and have family dialogues about how best to use the Internet and other library resources by developing search skills, critical thinking and knowledge of risks and benefits of using the Internet.

Virginia Beach developed our policies as part of a larger dialogue on what kind of library services our community wanted and needed. We started discussing the

Internet and filters with the public as early as 1994. We also started a public dialogue about library services as a whole and how the Internet and other electronic resources fit into this mix of services. This was done as part the process we used for developing long term plans for the expansion, construction and/or remodeling of our library branches. These public dialogues were extensive and held throughout the City in a series of eight meetings. It included discussions of just what the public wanted in terms of the balance between books and other printed materials vs. electronic resources.

Starting with these community discussions, our library launched many Internet education programs for individuals and families. It is important that our education programs inform all stakeholders about the Internet and its strengths and weaknesses so that informed decisions can be made. We continue to provide Internet training for parents and for families through classes and literature. In this process we encourage parents to ask whether their children know their own family values, whether they know and understand how best and safely to search the Internet, and how to behave online, in chat rooms, and on email.

We discuss with parents that no one sends a toddler out to cross even a neighborhood street alone. Adults accompany their children and stay with them at the roadside, until they are mature enough and trusted enough to cross on their own. As a child gets older they learn, again with more adult training and supervision, how to cross busier roads. They eventually learn that it is never wise to dash across a major interstate highway. It just isn't safe. The same type of incremental education and opportunities can and should be applied to using online Internet resources.

Our library advisory board, like hundreds of library boards across the country, has been directly involved in developing and leading the public discussions that have shaped our policies. Staff at all levels are also involved. We have provided continuing staff training and discussion about these issues so that staff understand and feel comfortable with the community policy. And, because this is a community-wide issue and we are a department of city government, we also met with the police department, the sheriff's department, and the office of the Commonwealth's Attorney during policy development.

We met with the recreation department, the schools, and even the public works department to inform and explain the community policy. If someone finds something on the Internet that they think is obscene or child pornography, we encourage them to go to the police with their complaint to have it properly investigated. Our policy is not static—just as the technology is not static. For example, right now we're amending our polices to deal with instant messaging issues.

In our branch, we have six Internet public access terminals not counting the terminal devoted to "Kidsnet." Patrons have a choice about whether to use a terminal that is fully filtered or one without filtering. One terminal is fully filtered using I-Gear software. We utilize their maximum level of filtering on that terminal which is in an open desk-carrell. There are five other terminals with no filtering.

The unfiltered terminals are designed for maximum privacy so that no one but that patron can see the screen. We do this in part so that there is no "visual startlement" for any other patrons. You have to invade their physical space to see what they are looking at. This is extremely important for all types of users. (Imagine looking up information about your own cancer treatment and likely prognosis in a public area.) We respect that different people have different values and comfort levels. That is why our community developed this flexible policy that respects patron choice.

Even before we offered public access, we had extensive staff training and discussion. We are sensitive to the concerns of our employees to help them understand why and how the policy was developed. We also have a complaint process although we remind people that we are a library, not a court of law; we are not authorized to legally determine whether something is obscene or not, whether it is Constitutional or not.

Now with CIPA, those well reasoned and community supported outcomes will be swept away and replaced by a blunt, indeed a crude instrument that cannot respect First Amendment freedom, distinguish between the needs of adults and children, or between the needs of a 7 year old and a 17 year old. The law does not respect the diversity of values of our communities or the power of concerned adults to find common sense solutions to protect children. Sadly, the communities that will suffer most from the CIPA mandate are those where librarians are struggling to provide the first bridge across the digital divide and most need the E-rate discounts.

What is expected from librarians under CIPA? Simply put—to do what cannot be done. As Clarence Page so eloquently put in a recent editorial in the Chicago Tribune to, "force them to bear the cost of technology that is expected to do what tech-

nology cannot do: make value judgement about what material may be too pornographic, hateful, illegal, or violent for human consumption."

It would be difficult to put a price on the loss of the library as a "mighty resource in the free market of ideas" (6th Circuit 1976). It would be difficult to put a price on the transformation of the librarian into a full time content monitor and censor. It would be difficult to put a price on the replacement of trained librarians and teachers, working and living within their communities, by a filtering company which must sell to a national market to make a profit and which typically refuses to disclose its blocking criteria, their employees' qualifications, their "point of view" or their biases.

Librarians are well aware that Internet access can create or exacerbate social problems, but we are philosophically committed to finding answers in humane, not mechanical ways. We look to education, both for skills and character, rather than to technology, for solutions. We cannot and should not substitute for parents. It is precisely because libraries are not a mass medium that we have no way of knowing what any individual child's parents would choose for that child. We constantly urge parents to be part of their child's library, not just Internet, experience because no one knows their child better or can apply their personal values better. And, we do not want our parents to have a false sense of security by relying too heavily on technological measures. The Internet is not the issue—it's people and behavior that are at issue.

Now, with CIPA, Congress has substituted its judgement for libraries all over our country that have—with their communities—tackled the tough questions on how best to guide children's Internet access and reached a diverse set of solutions. When Congress enacted CIPA, the issue of how best to guide children's Internet access appeared to be treated as an easy "yes or no" decision. In fact, it is complex and deserves a full range of discussion in the community and in the Nation. In my experience, those discussions lead people of all persuasions to recognize that there is no simple answer to this complicated issue and to encourage us all to work toward a viable solution.

In the end, the CIPA law forces libraries to make an impossible choice: submit to a law that forces libraries to deny their patrons access to constitutionally protected information on the Internet or forgo vital Federal assistance which has been central to bringing the Internet to a wide audience. It is because the CIPA law demands that libraries abandon the essential role that they play in a free society as the "quintessential focus of the receipt of information." (Third Circuit 1992) that the American Library Association, the Freedom to Read Foundation and many local libraries and state library associations have challenged this law in Federal Court.

Although I do not agree with the decision made by Congress, I am hopeful that your Subcommittee will recognize the vital role that libraries play in assisting parents to help their children and themselves learn to use these marvelous resources in ways consistent with their family values. Although I believe that CIPA cannot and will not achieve the goals of the promoters of filtering, and that, in the process, communities and the First Amendment will be the victims, I am hopeful that this will start a renewed dialogue between your Subcommittee, the library community and other stakeholders. I realize that it is too much to suggest that Congress should revisit this issue but I believe that we must work together on how best to provide our children, lifelong learners and students with the skills and the resources to function effectively and safely in the information age of the Internet.

Congress must understand that there is "no one-size fits all" solution that the Federal government can impose that is better or more thoughtful than the solutions communities adopt. Even as we all wait for the pending litigation process to be completed, we in the library community, stand ready to work with you and to continue this dialogue.

Mr. UPTON. We thank you for your testimony, and again it is made part of the record in its entirety.

Ms. Getgood, welcome.

STATEMENT OF SUSAN J. GETGOOD, VICE PRESIDENT, EDUCATION MARKET, SURFCONTROL

Ms. GETGOOD. Thank you. Chairman Upton and distingished members of the subcommittee, I appreciate the opportunity to speak with you today about Internet filtering technology, the reasons that so many schools use it, and how it works.

My name is Susan Getgood and I am Vice President for Education Markets at SurfControl. SurfControl is the owner of CyberPatrol, the most widely used Internet filtering software in homes and schools. I have been in the filtering industry for nearly 6 years, which makes me something of an elder stateswoman in this area.

CyberPatrol was a member of the Plaintiff's Coalition that successfully challenged the constitutionality of the Communications Decency Act in 1996. One of the chief arguments in that case was that filtering technology was more effective than the law in protecting children from inappropriate content on line. It still is.

The difference between now and then is that there are vastly more children on line and the technology is vastly better. More children are surfing the Internet than ever before; about 30 million according to the last study.

Educators are well aware of the dangers on the Internet. Almost all of America's K through 12 schools have Internet access. Many directly in the classroom, and about 60 percent of these schools already use filtering technology. In deciding to use filtering technology to safeguard kids, educators have parents squarely behind them.

According to a 2000 digital media forum study, 92 percent of Americans thought that pornography should be blocked on school computers, and most educators agree. Filtering software puts the choice of how and when children should use the web where it should be; in the hands of parents and educators.

Filtering software in 1996 was, and in 2001 continues to be, the most effective way to safeguard kids from inappropriate content online, while safeguarding our First Amendment rights. Filtering software is safety technology, like seatbelts, for Internet surfing.

Seatbelts are not 100 percent guaranteed to save a child's life, but there is not a parent in America that doesn't buckle up when they get in the car. In the same way, filtering technology may not be 100 percent fool-proof, but are users say it is more than 90 percent effective, and they demonstrate their satisfaction with our products by buying it, installing them, and renewing them year after year. CyberPatrol's renewal rate is 90 percent.

Educators know that filtering software is reliable, effective, and flexible enough to allow them to tailor it to their specific needs. They also know what filtering technology is not.

It is not a replacement for the guidance of parents and teachers. Schools implement filtering technology for many reasons, and clearly the most compelling reason is the desire to protect children at school from anything to sexually explicit content to how to build a bomb, and how to buy a gun.

Increasingly, we find that schools are also driven by issues of legal liability and network band width. Schools are already filtering, as are some libraries, regardless of any law or government mandate. We currently have more than 20,000 installations of CyberPatrol in schools, school districts, and libraries, across the country, filtering over 1 million school computers.

I have been asked to tell you a little bit about how the technology works. Despite the widespread use of Internet filtering technology, there is a great deal of misunderstanding about how it works.

In the case of SurfControl and CyberPatrol, human reviewers, who are parents, teachers, and trained professionals, build lists based on published criteria. We do use artificial intelligence in the research process, but all sites added to our list of inappropriate sites have been looked at by a person.

This is an important point because it means that there is no confusion over chicken breasts than human ones. Filters used in schools and other institutions are usually server based and integrate with existing network users and groups for the ease of use by the library or the school.

In our case, we offer stand alone versions of CyberPatrol for patents at home, and server based solutions for schools. In our product, CyberPatrol, keyword filtering is strictly optional. It allows more control, including blocking search engine results, which can often be quite descriptive.

Using key word filtering can also filter out material that is not inappropriate, a condition often referred to as a false positive. Because of this, we offer key word filtering as a customable option in our software, but never as a default technology used to filter websites.

We are often asked why we don't publish the list. We have spent thousands of dollars in 6 years of work creating a list that cannot be duplicated and is proprietary. No one has ever made a credible business case for reviewing the list, and ultimately a company whose mission is to protect kids is not going to publish a directory of dirty sites.

I am certain that every company in our industries feel the same way. Filtering software is very effective. Independent reviews consistently show our CyberPatrol to be 80 to 90 percent effective in filtering out inappropriate content. That is much more than a passing grade.

But the ultimate test of the filter's effect in this is how well it meets the user's needs. Each parent, each school, decides how it wants to deploy the filter. And then last just a few comments since I am running out of time on CHIPA.

We believe that CyberPatrol effectively protects children from adult material and fully satisfies the Children's Internet Protection Act requiring that schools and libraries use such filtering technology to receive their Federal funds. We also believe in choice, and believe that it should be up to each library and school to decide what is best for its patrons.

Some schools mistakenly believe that the ACLU and ALA lawsuits apply to them, and they don't. Many schools are waiting for the FCC ruling regarding certification on April 20.

For the 60 percent of schools in this country that have already implemented filtering software, this is a crucial date. We believe that there is an interesting Constitutional case regarding mandated filtering in public libraries, and we hope that the ACLU and the ALA would stick to their legal arguments and not turn to the erroneous arguments that filters don't work.

Filters do work and they work well. We believe that a simple self-certification is the best solution. We also think that a message needs to be sent to schools to let them know that this lawsuit is not about schools, and we hope that this hearing and the FCC rul-

ing next month will clear up some of the confusion. Thank you very much.

[The prepared statement of Susan J. Getgood follows:]

PREPARED STATEMENT OF SUSAN J. GETGOOD, VICE PRESIDENT, EDUCATION MARKET, SURFCONTROL, INC.

Chairman Upton, and distinguished members of the subcommittee on Telecommunications and the Internet, I appreciate the opportunity to speak with you today about Internet filtering technology, the reason so many schools use it and how it works. My name is Susan Getgood and I am Vice President for the Education Market at SurfControl.

SurfControl is the owner of Cyber Patrol, the most widely used Internet filtering technology in homes and schools. I have been in the filtering industry for nearly six years, which makes me something of an elder stateswoman in this arena. Cyber Patrol was a member of the plaintiffs coalition that successfully challenged the constitutionality of the Communications Decency Act in 1996, ACLU v Janet Reno. One of the chief arguments in that case was that filtering technology was much more effective than the law in protecting children from inappropriate content online. It still is. The difference between now and then is that the technology is vastly better. And, there are vastly more children online that deserve protection.

THE GROWTH OF THE NET SAVVY CHILD

More children are surfing the Net at home and school than ever before. More than 30 million children in the United States have access to the Internet, according to the Pew Project on the Internet & American Life. Once online, these children find a wealth of valuable, educational and entertaining content. But, as you know, not all online content is meant for kids. The respected National Center for Missing and Exploited Children estimates that 25 percent of children are exposed to unwanted and inappropriate content online.

Educators are well aware of the dangers. Almost all of America's K-12 schools have Internet access, many directly in the classroom and of these, about 60 percent of schools already use some sort of filtering device, according to Quality Education Data.

In deciding to use filtering technology to safeguard kids, educators have parents squarely behind them.

PARENTS AND EDUCATORS SPEAK OUT

A 2000 Digital Media Forum survey found that 92 percent of Americans thought pornography should be blocked on school computers.

A Middle and High School Computer Lab Director at Silver Creek Central School District in New York was recently quoted in the press talking about the schools' wake-up call, and why it decided to buy and install filtering software. The educator said:

> "I checked the history of each computer daily and was appalled at the Web sites our students were able to access. Students were visiting sexually explicit sites, gambling, applying for credit cards, buying products with their parents' credit cards, sending for free stuff and talking to strangers via chat rooms."

Ray Tode, School Technology Office for Andover, Massachusetts schools, uses SurfControl's Cyber Patrol:

> "The Internet is an important tool for the classroom. But with the Internet comes inappropriate sites. So we want to filter out those inappropriate sites to protect our students."

ABOUT FILTERING SOFTWARE

Filtering software puts the *choice* of how and when children should use the Web where it should be . . . in the hands of parents and educators. Filtering software in 1996 was, and in 2001 continues to be, the most *effective* way to safeguard kids from inappropriate Web content while safeguarding our First Amendment rights of free speech.

Filtering software is safety technology, like seatbelts, for Internet surfing. Seatbelts aren't 100% guaranteed to save a child's life, but there's not a parent in America that doesn't buckle their child's seatbelt when the family gets in the car. Similarly, filtering technology may not be 100% foolproof, but our users say it is more than 90 percent effective and they demonstrate their satisfaction with our product

by buying it, installing it and renewing their subscriptions year after year. Cyber Patrol's renewal rate is over 90%.

Educators know that filtering software is reliable, effective and flexible enough to allow them to tailor it to their specific needs. They also know what filtering technology is not. It is NOT a replacement for the guidance of parents and teachers.

SURFCONTROL

SurfControl is a leading provider of Internet filtering solutions for homes, schools and businesses. It acquired SurfWatch in 1999 and Cyber Patrol in 2000. Both of these companies were pioneers in the Internet filtering industry.

Because SurfControl provides filtering products for all major sectors—business, education, home and other technology companies—it understands why each market deploys filtering software.

At home, parents purchase filtering software to protect their children from inappropriate content online. Corporations implement filtering software to maximize employee productivity, protect the company from legal liability arising from potential sexual harassment and preserve network bandwidth and security.

Schools implement filtering software for ALL of these reasons. Clearly, the most compelling reason is the desire to protect children at school from everything from sexually explicit content to how to build a bomb and how to buy a gun. Increasingly, we are finding that schools are also driven by the issues of legal liability and network bandwidth.

This was confirmed by a recent survey we conducted asking 1200 customers how important network bandwidth was in their Internet management this year. About 70% of the schools said that network bandwidth was important or very important *this* year. This compares to only 55% that noted its importance *last* year. The growing need to better manage bandwidth in schools has been given additional importance with the popularity of file sharing services like Napster and the widespread use of streaming video.

What this means is that the majority of schools were already filtering and now even more find it an important Internet management tool—irrespective of any law or government mandate.

We currently have more than 20,000 installations of Cyber Patrol in schools and school districts, filtering over 1 million school computers. Business is booming.

HOW WEB FILTERING WORKS

Despite the widespread use of Internet filtering technology and its longevity in the marketplace, a great deal of misunderstanding exists about how it actually works. The most commonly used filters in schools, like SurfControl's Cyber Patrol and N2H2's Bess, are category list-based products that filter by IP address or domain name.

In the case of Cyber Patrol, human reviewers, who are parents, teachers and trained professionals, build the lists based on published criteria. We use artificial intelligence in the research process, but ALL sites added to our CyberNOT list of inappropriate content have been reviewed by a person. This is an important point because it means there is no confusion over chicken breasts and human ones.

Some products filter at the root, or domain, level. More sophisticated filters like Cyber Patrol allow restrictions to be set at directory or page levels, so you don't have to restrict an entire website if one page contains inappropriate content.

The CyberNOT list is divided into 12 categories: Violence/Profanity, Partial Nudity, Full Nudity, Sexual Acts, Gross Depictions; Intolerance; Satanic/Cult, Alcohol & Tobacco, Drugs/Drug Culture, Militant/Extremist, Sex Education and Questionable/Illegal & Gambling. Other products used in schools offer similar categories.

Filters used in schools and other institutions are usually server-based and integrate with existing network users and groups for ease of administration and security. In our case, we offer standalone versions of Cyber Patrol for parents at home and server-based solutions for schools. A new version of Cyber Patrol has been created for Microsoft's ISA Server, the latest technology for Internet servers.

In Cyber Patrol, keyword filtering is strictly *optional.* It allows more control, including blocking search engine results which can often be QUITE descriptive. Using keyword filtering can also filter out material that is not inappropriate, a condition often referred to as a false positive. Because of this, we offer keyword filtering as a customizable option in Cyber Patrol but never as the default technology used to filter websites.

Typically, filtering software is sold as a subscription that includes the right to use the software for a specified number of users and a subscription to the vendor's list of inappropriate sites. As an example, a 100-user license of Cyber Patrol would cost

a school about $1500 per year. We also offer schools an e-rate discount to help compensate for the fact that e-rate funds cannot be used for filtering software.

WHY DON'T YOU PUBLISH THE LIST?

We are often asked why we don't publish the list of inappropriate sites. SurfControl has spent thousands of dollars and six years of work creating a list that cannot be duplicated and is proprietary. No one has ever made a credible business case for revealing the list, and ultimately, a company whose mission is to protect kids is not going to publish a directory of dirty sites. I am certain that the other companies in our industry have similar feelings.

HOW EFFECTIVE IS FILTERING SOFTWARE?

Filtering software is very effective. Independent reviews consistently show SurfControl's Cyber Patrol to be 80 to 90 percent effective in filtering out inappropriate content. That's much more than a passing grade.

But the ultimate test of the filter's effectiveness is how well it meets the user's needs. Each parent, each school decides how it wants to deploy the filter. The most commonly used filters like Cyber Patrol, Bess and Net Nanny allow users to make their own choices about what is restricted or allowed. The user can choose which categories to use, customize filtering levels to individual kids or classes and even create their own list of content to be restricted or allowed. For example, with Cyber Patrol a school can restrict all sexually explicit content for younger children and allow our Sex Education category, which includes important resources like Planned Parenthood, for older children.

Filtering software, including the server-based software used in schools, is highly tamper resistant. It is also designed to be easy to use, for the busy school technology coordinator, and easy to customize, to satisfy the teachers who need adjustments made to meet educational goals.

Ultimately, in a competitive market economy, companies like ours are successful because we offer products that meet the needs of our customers. Our customers require, and get, the best tools possible for managing Internet access and our development team works every day to constantly improve the technology.

SURFCONTROL'S CYBER PATROL SATISFIES CHIPA

SurfControl's Cyber Patrol software effectively protects children from adult material online and fully satisfies the Children's Internet Protection Act requiring schools and libraries that receive federal aid for Internet service to use such filtering technology.

Thousands of schools and libraries nationwide have been using Cyber Patrol and other filters for years. Our focus was and continues to be on schools, not libraries. We do not market to libraries. But we do believe in choice. We believe it should be up to each local library to decide what is best for its patrons.

Cyber Patrol does not have separate categories for "Child Pornography" or "Obscene by Legal Definition." These are legal terms requiring interpretation by attorneys and the courts. But Cyber Patrol does block illegal and pornographic material. It also filters obscene speech that has been defined by the courts. And we filter other online material that many people deem inappropriate for children, such as gambling, violence, hate speech, cults, alcohol and tobacco. Using the custom list capability, any user could also create their own restrictive list, for example, of sites determined by a local court to be obscene.

The ACLU and the ALA have an interesting constitutional case regarding mandated filtering in public libraries. We had hoped they'd stick to the legal arguments, and not turn to the erroneous argument that filters don't work. Filters do work, and they work well. But they have not stuck to the legal case and the result has been some confusion.

Some schools mistakenly believe the ACLU and ALA lawsuits apply to them. They don't. Many schools are waiting for the FCC ruling regarding certification on April 20. For the 60% of schools in this country that have already implemented filtering software, this is a crucial date.

We believe that a simple self-certification is the best solution. We think that a message needs to be sent to schools to let them know the lawsuit is not about schools. This hearing and the FCC ruling may help clear up some of the confusion.

Filtering software products like Cyber Patrol are technical solutions to help implement school policy and choice. SurfControl makes the software; our users make their own choices about how they will use it in their home, school or business. Our job is to meet the needs of our users and we will continue to do so as those needs, and the Internet itself, change and evolve. Thank you.

Mr. UPTON. You did very well speaking very fast. I would just note that your entire remarks are made part of the record, and for purposes of an introduction, I yield to a good friend and Member of the Subcommittee, Mr. Largent, from Oklahoma.

Mr. LARGENT. Thank you, Mr. Chairman. I want to welcome a friend and a constituent from Tulsa, Chris Ophus. He is the President of FamilyConnect, an Internet filtering service that we employ in our own home, and, Chris, we want to welcome you to the Subcommittee and look forward to your testimony.

STATEMENT OF CHRISTIAN OPHUS, PRESIDENT, FAMILYCONNECT

Mr. OPHUS. Thank you. I appreciate it. As Congressman Largent said, my name is Chris Ophus. I am co-founder and president of a company called FC Technologies, and that specifically deals in filtering technology and to create workable solutions.

I am also currently serving as the president of the Internet Safety Association, which is a group of Internet filtering technology companies that have come together to be able to offer solutions very much in particular to what this bill has to say.

I, as the same as Ms Getgood, and I do agree with what she has said, have such a tremendous amount of information that there is no way to cover it all, and what I would like to do is just cover a couple of things.

The Internet is without a doubt the most unique mass medium that is out there. It is a convergence of all the mass mediums—radio, television, print, mail. They are all coming together as one.

And because it is an emergent technology, there is a unique set of problems that have been created because of the open forum, the open software and the way it works, and the technology, and it creates a lot of problems.

But part of the problem that we are seeing here is we are seeing an attack on Internet filtering because of the First Amendment, and the First Amendment is a very sacred cornerstone to our government, and we all believe in that, but there are obvious exceptions: obscene, illegal, and harmful to minors material.

My big question is why is there all this controversy here. What makes the Internet as it is used in public schools and libraries immune to some of these existing laws that are already in place?

You have got to have exceptions; child porn and a lot of the violence, and rape, and molestation, and those types of things, filters really are the best way to block that and keep the good.

Now, I will say that as anybody else who works in the filtering industry, filters are not fool proof. But one of the other things that we have been seeing a lot of is that there is all different kinds of filtering products.

There are some that are client side, and some that are server side, and Ms. Getgood mentioned that. In a recent Consumer Reports article—and Mr. Johnson mentioned that just a few moments ago—there was a test done.

And the test basically covered about six products that were in the consumer side, and the results were very negative. And because of that report, I had sent a letter to the editor, David Hyme, of Consumer Reports, outlining some of the things that I thought

were concerns with his report; the small sample size, and the unknown criterion, whether or not the sample was random; testing only 6 of the 141 products that get netwised out of ORD lists.

And also not testing educational filters, and I have a copy of the Consumer Reports letter that he returned to me, but I want to just outline in the next to last paragraph that he returned a response and said, "we are, however, guilty of testing only so-called client side software.

"Since our founding, we focused on testing products available to consumers. It is not part of our breach to test software sold exclusively to schools and libraries."

Now, the Consumer Reports article is being mentioned by the American Library Association, and the ACLU, is proof positive that filtering does not work; when in fact what is happening is that they are testing some of the lower level filtering systems and painting the entire filtering industry with that brush, and that simply is not true.

The truth is that filtering does work. I would like to make another comment regarding what he had said, and I will include it in my testimony, because I feel that it is very important. And that is regarding education. That education alone, or as a component of some other ideas aside from technology protection measures, can somehow be able to protect us.

If you take an example of drivers education. We have drivers education and all the drivers education in the world is not going to stop teenagers, or even adults, from getting into accidents, and Ms. Getgood even mentioned the seat belt laws.

We have laws that are going to try to do the best that they can to be able to control and manage this kind of technology. I would like to quote another gentleman, Christopher Hunter, who was one of the COPA panelists which was also mentioned.

And he said that the majority of the reports about Internet content filters being both under and over inclusive—he was talking about blocking—are from journalists and anti-censorship groups who have used largely unscientific methods to arrive at the conclusion that filters are deeply flawed.

If you look at some of the other testing that is done out there, there have been some larger tests, some comprehensive tests, one by David Burt, in "Dangerous Access 2000," where a particular filtering product was used in the public library in Cincinnati over a large period of time, a large sample.

And found that they only wrongly blocked sites .019 percent of the time. There have been similar studies in other libraries that have done this type of thing. So, I would say in conclusion that there is a crying need for Internet filtering out there.

And out of the all of the decisions that need to be made by this subcommittee, certainly whether or not filtering is effective should not be one of them. The technology exists out there; the artificial intelligence, computer spidering, human review, millions of data bases categorized, and all of those things come together to provide the effective tools that librarians and educators need and already have to be able to be effective. Thanks.

[The prepared statement of Christian Ophus follows:]

PREPARED STATEMENT OF CHRISTIAN OPHUS, PRESIDENT, INTERNET SAFETY ASSOCIATION

INTRODUCTION

My name is Christian Ophus, I am the co-founder and President of FamilyConnect, Inc. and S4F Technologies, Inc., a filtering technology provider founded in 1997 and headquartered in Tulsa, OK.

In addition to my corporate duties, I currently serve as President of the Internet Safety Association, founded in September 2000 and headquartered in Washington D.C. The ISA (Internet Safety Association) was created by leaders in the Internet Content Management Industry to promote safe use of the Internet for all users.

I would like to thank the U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet for inviting me to submit testimony.

I will focus my comments specifically on filtering & Internet content management technology, offering background, current approaches and tools, and future developments.

TECHNOLOGY PROTECTION MEASURES—WHY ARE THEY NECESSARY?

The Internet is truly the most comprehensive and unique mass medium in the history of communication. The Internet is rapidly becoming the convergence of all other forms of communication. Television, radio, print, postal service and telephone service, are all available via the Internet. But even more amazing, is that the Internet has become the new backbone of these other communication mediums, ensuring that the Internet industry is here to stay. Our dependency upon this new medium has flourished, especially in the past decade. The Internet is an emerging technology that has it's own set of problems.

The Internet is essentially an open network with a common language that allows anyone worldwide to access and transmit information. It is essentially a public forum, which fosters the free transmission of information and ideas.

One of the sacred cornerstones of the founding fathers was to preserve the free transmission of ideas and information. That is why the very first amendment covered this issue. However, there are obvious exceptions to the first amendment. Information that is obscene, illegal and harmful to minors is not protected under the first amendment. Outside of the Internet, this type of information in any other medium is prosecutable under existing laws and regulations. To understand why illegal content via the Internet has become so controversial is puzzling. One might ask: What makes the Internet immune to existing laws and statutes that are already in place to protect individuals from material that is deemed detrimental in nature?

Although the Internet is a viable tool for business, education and commerce, there is a significant amount of obscenity and illegal information. The goal is to limit access to this type of material without affecting the overall Internet experience for the user. Filtering technology is the best alternative to solving these issues.

Historically, there has been controversy concerning the effectiveness of filters. The rapid growth and dynamic nature of the Internet make Internet filtering a constant moving target.

In the mid-nineties, a few companies emerged in an effort to offer technological solutions to the ever-expanding problem of detrimental and illegal activity on the Internet.

The first approach relied on artificial intelligence to block access to pornographic or objectionable material. These systems were based on keyword filters that would filter incoming data and look for words such as "sex", "XXX" or "breast". This type of approach was, in fact, good at identifying pornographic & illegal websites, but inadvertently blocked legitimate site searches such as "Middlesex", "Super bowl XXX" or "chicken breast recipes", etc. To solve this problem, new ways of filtering would have to be developed.

Many opponents of filtering use the argument that filters still make these kinds of mistakes. Today's technology has risen far above these early products by using computers that scour the Internet coupled with human review to ensure a high level of accuracy.

In fact, today's Technology protection measures are more advanced than ever before. Not every filtering product is the same. In the same way that there are different types of automobiles, some have more features than others, some are more expensive and then there are some that were created with specific purposes in mind. If your desire were to race in the Daytona 500, then you would not drive a Yugo. If your goal were fuel economy, you would not drive a Hummer. Similarly, there are different types of filters for different objectives. Some are less expensive and offer

less protection and less control. At the same time, there are filtering products that have been specifically designed to operate in a more commercial application such as large corporations, schools and libraries.

To ensure successful lasting implementation of a technology protection measure, you must fit the product with the application. Opponents of filtering have misled the public into believing that filtering does not work, or more accurately, does not work well. The justification for this claim has been a few isolated studies where the testing criterion is questionable and the results generalized.

In March 2001, Consumer Reports published an article about filtering technology where 6 off-the-shelf filtering products were tested. The results indicated that the tested products did poorly when the testing criterion was applied. The article proceeded to question the government's imposition of filtering on schools and libraries through the Children's Internet Protection Act, citing that the test results were clearly negative.

In response to the article, I wrote the editor of Consumer Reports on February 23, 2001 and questioned the products tested and the criterion used to test the effectiveness. Here is an excerpt of that letter:

> "First, the objectionable content site sample used, 86, was obviously but a small fraction in comparison to the vast number of adult and illegal websites on the web. To effectively test any filter, a more appropriate sample might have been 10,000 or even higher.
>
> Second, a thoughtful set of criteria should be established in the selection of sites to be tested to ensure that the sites chosen are a statistically accurate representative sample of the range and type of objectionable sites found on the web. Your article did not indicate what criterion, if any, was used to determine which 86 sites were to be used. For example, we do not know if the author searched for 86 obscure sites or chose a random sample from a popular search engine. The answer to that question would dramatically affect the outcome of your informal survey.
>
> Third, only six of the 141 filter-related products listed on the popular information website www.getnetwise.org were tested. The products tested, with the exception of AOL's parental controls, are client-side products. No server-side filter systems were tested. Also, some of the most popular filter programs were not included in the test.
>
> Fourth, none of the filters tested are those typically used in the educational space. Filters such as N2H2, X-stop, I-gear, S4F and Web Sense were not even mentioned, and these products represent the vast majority of the access-control market share. Would it not be reasonable to test those products that are most commonly used and perhaps those who have made the greatest advancement in creating solutions that work for everyone?
>
> Fifth, the test conducted did not include one of the most important aspects of filtering, the ability of the software to be overridden or bypassed by web-savvy kids. A filter can be a false sense of security to a parent or educator if it can be easily bypassed. Features such as this contribute greatly to the overall value and effectiveness of a filter.
>
> I hope you can see how these seemingly innocent oversights lead to erroneous, generalized conclusions. The fact is, there have been significant advancements by many companies even in the past year that validate the claim that filtering works and is effective in protecting children from illegal and dangerous information."

In response to my letter, I received a return letter dated March 7th, 2001 where the editor admitted that the products tested were from the consumer level and not those used in the educational space.

> "We are, however guilty of testing only so-called client-side software. Since our founding in 1936, we've focused on testing products available to consumers at the retail level. It is not part of our brief to test software sold exclusively to schools or libraries. By analogy, we would test garden hoses, sponges and auto polish, but not commercial car-wash equipment."

I encouraged the editor to consider a more comprehensive test where some of the more popular and broadly used filters could be included. I am sure the results would be entirely different.

David Burt, in his written testimony before the COPA commission in July of 2000, cited several larger studies of Internet filtering products where the outcome of filtering effectiveness was quite different.

In the Dangerous Access, 2000 edition by David Burt, the filter product, Bess, used at the public library in Cincinnati and Hamilton County wrongly blocked sites only .019% of the time.

A study by Michael Sims "Censored Access in Utah Public Schools, 1999" found error blocking rates at .036%. These numbers are a far cry from so-called tests being highlighted by filtering opponents.

Christopher Hunter, a COPA panelist said:

> "The majority of reports about Internet content filters being both under inclusive and over inclusive have come from journalists and anti-censorship groups who have used largely unscientific methods to arrive at the conclusion that filters are deeply flawed."

CURRENT APPROACHES TO CONTENT FILTERING

There are two typical approaches to filtering—inclusion filtering, and exclusion filtering.

Inclusion Filtering—White Lists

With inclusion filtering, Internet users are permitted access to particular "allowed" sites. This type of filtering can be 100% effective—assuming the person or organization that has compiled the white list that shares the same set of values as the Internet user. Because of the global nature of the Internet, it is difficult to create with a globally accepted set of criteria. The main drawback of inclusion filtering is that the "acceptable list" would have to be enormous to be accurate. The creation of a blocked list tends to be more manageable.

Exclusion Filtering

Exclusion filtering is based on *black lists* (or *block lists*) of objectionable sites. This is a more common form of filtering than inclusion filtering, and has the advantage that black lists will invariably be smaller than white lists. A second advantage is that unrated sites are presumed to be innocent till proven guilty, and so do not need to be automatically excluded.

Both types of content filtering require a constant effort to maintain a valid and updated list for use by the user. The most effective approach is to use the benefit of computer technology, coupled with unique capabilities in human review.

WHAT CONTENT CAN BE BLOCKED?

In the early days, companies offered 1 or more categories of blocked sites, offering little or no control to the end-user. Today, most companies offer multiple categories and varying levels within these categories, giving complete control and flexibility of application to the end-user.

Some filtering providers offer as many as 35 categories allowing the administrator complete local control over what is being blocked. Here is an example of a typical category listing from N2H2:

> Adults Only, Auction, Chat, Drugs, Education, Electronic Commerce, Employment Search, For Kids, Free Mail, Free Pages, Gambling, Games, Hate/Discrimination, History, Illegal, Jokes, Lingerie, Medical, Message/Bulletin Boards, Moderated, Murder/Suicide, News, Nudity, Personal Information, Personals, Pornography, Recreation/Entertainment, School Cheating Info, Search, Search Terms, Sex, Sports, Stocks, Swimsuits, Tasteless/Gross, Tobacco, Violence, Weapons

Most of the above categories are not classified as illegal or detrimental in nature, but give the user a wide range of control when determining what information is appropriate for the viewer or more commonly, for what application the filter is being used.

An employer may want to block access to job sites or other non-work related sites to reduce employee Internet abuse in the workplace. Several studies have indicated that loss of productivity from Internet use has cost employers billions of dollars each year.

The point is filtering products today offer the user a wide range of options and combinations that allow the user to determine what is and is not blocked. In the educational space, the local school board can determine what information is appropriate to block based upon community standards, federal laws and the individual states harmful to minors statutes.

HOW FILTERING IS ACCOMPLISHED

There are several approaches to filtering content. As technology has progressed, the most effective methods have been improved, new ways to filter have been developed and many products have taken the best features from each approach and created a hybrid of several methods.

There are four primary methods that are used in varying degrees.

URL Filtering

This is the most common, and most effective form of filtering, and involves the filtering of a site based on its URL (i.e. its address). It provides more fine-grained control than packet filtering, since a URL can specify a particular page within a large site, rather than specifying the IP address of the computer that hosts the Content.

S4F Technologies adds an average of 5,000—7,000 new URL's to its database each week. Computer spiders scour the Internet using a sophisticated search mechanism that collects potential sites for human review. Spidering computers run programs that systematically read through the World Wide Web and collect URL's (Uniform Resource Locators) that match a particular set of criteria established a filtering department. These computer can run 24 hours a day and collect potential candidates to be added to the database. However, spiders are not perfect, and using spiders alone as the mechanism for fortifying a blocked site database would result in overblocking. That is why human review must be used when accurately building a blocked database.

During the human review process, using custom browsers, sites can be positively identified and properly added to the database. As soon as a site is added, it is active in the blocked list for all to use. If a site is inadvertently blocked, it is reviewed and a decision is made within 24 at the most. If the site contains Child Pornography it is automatically forwarded to the National Center for Missing and Exploited Children.

One of the challenges facing filtering departments is managing the constant change of the Internet. When a website is reviewed, it may not contain obscene material, but at some later point, the author of the website may change the content that now would be considered inappropriate. Conversely, a site with content that may have at one time been considered pornographic or illegal could change and be perfectly acceptable. So, in addition to keeping up new sites that come online daily, filtering departments must constantly review those sites that are already categorized.

Considering the ongoing task of Internet content data management, coupled with the constant change in the Internet snapshot, filtering companies do an amazing job of keeping up.

Keyword Filtering

Keyword filtering was the first generation of filtering. With keyword filtering, content is scanned as it is being loaded into a user's computer for keywords, which are included in a black list. A site is blocked if it contains any of the words in the block list.

The advantage of keyword filtering is that it adds very little computational overhead. The main disadvantage is that it checks text only, and cannot block objectionable pictures, plus, some products filters are indiscriminate, as the context is not taken into account.

However, one of the advances of S4F Technologies, is the development of IKSSB (Intelligent Keyword Search String Block out) where the keyword component operates as a secondary line of defense to the primary specific URL block out database, and has the ability to decipher the difference between a website containing pornography, and one that has text which contains the word pornography.

For example the IKSSB can differentiate between searches for "breast" and "chicken breast recipes" or another example, the difference between "sex" and "Middlesex, England". Both of these examples have been tirelessly used by opponents of filtering to claim that keyword filters can block useful sites.

IKSSB Keyword Search String Examples

Blocked	Not Blocked
Sex	Middlesex, England, Sexually Transmitted Diseases, Sex Education, Sextant
Breast	Chicken Breast, Breast Cancer

Although S4F uses this filter component as a secondary line of defense, it exhibits the technological adaptation of filtering companies to remedy earlier filter problems. Technical issues regarding filters have been overcome by most leading companies in the filtering space.

Packet Sniffing

Content is delivered over the Internet in *packets* of information. Each packet has the IP address of where it is going to, as well as the IP address of where it has

come from. Packet sniffing involves examining the *IP address* of where the Content has originated. This approach moves the point of filtering to the level of the router offering increased speed and efficiency. There are several companies that are developing packet-sniffer products at this time.

Image recognition filtering

A handful of companies have produced filtering products that examine images as they are delivered to a user. This is a relatively recent approach, and relies on techniques such as the detection of skin tones, or indeed on the analysis of images themselves. It is computationally quite intensive, and computers will invariably experience difficulty in distinguishing between art and pornography. A photograph that is artistic in nature cannot be distinguished from that of obscenity. These types of value judgments can only be made by human review. Video and other streaming media further complicate the filtering task by supplying a constant flow of images to be examined for undesirable content.

WHERE DOES CONTENT FILTERING OCCUR?

There are four technical components of filtering systems: browser-based, client-side software, proxy servers, and server-side filtering servers.

No filter is foolproof. There are 146 filtering tools listed on the popular website www.getnetwise.org. Each of these products essentially falls into one of the categories below. It is important to note that no filtering system is designed to work well in every application.

Some of the lower-end products would not be recommended for use in schools and libraries because they lack the specific features that educators need to create the best filtering scenario for their school, library and for their community. Conversely, those products that are used in the corporate space may need more flexibility of categories, and schools & libraries might be only interested in blocking sites that fall into the obscene, illegal and harmful to minors categories where parents might have other desires.

Client-Side Software—This type of method is typically marketed at the consumer level. Filtering can be implemented by placing a software program on the end-user's computer. The software then runs while the user is online, performing the particular filtering functions. Client-side software may require the end-user to configure the software and download updated website lists.

The security loopholes with client-side software are a concern. Many smart children can disable filtering software faster than a parent or teacher can install it. In addition, there are quick and easy programs written to disable the major companies' software with the click of a mouse. These programs are circulated among children who simply download it from the Internet, place it on a floppy disk, and pass it around.

Proxy Servers—Filtering functionality can be removed from the end-user's computer and placed on a server somewhere else on the Internet, called a proxy. With a proxy server, all website traffic must go from the end-user's computer through the proxy server, then to the rest of the Internet.

Proxy servers offer more security than client-side software. All users must go through this proxy server to be able to access the Internet "proper". To do so, the client is required to configure their software to "point to" this proxy server to be able to access Web pages and ftp files. a range of Internet-based Failure to do so will result in blocked access to the Internet. A proxy filter can be selective about what it blocks, and can be configured to block or permit access to services.

Browser Settings—Filters using built-in browser settings typically uses a ratings system. These systems are less intrusive but typically less accurate.

Microsoft Internet Explorer provides content security settings for the Internet Content Ratings Association's RSACi ratings, the most popular ratings system on the market. However, if a site is not rated, it is not accessible. Popular sites that are not rated include ESPN, CNN, eBay, Amazon, and AOL. In fact, most sites are not rated, making them inaccessible to the user.

Some filtering software "decides" what to block based on how a site is rated—not entirely unlike the way parents use movie ratings. This method offers fewer features and less precision compared to some of the higher-end server-side products.

Hybrid Filters—There is a new filtering method that utilizes the best features from each of the other methods. This hybrid system has varying forms. S4F Technologies patent-pending system uses a server-side component that works in tandem with a thin client-side software interface. By using more than one method, the user is able to take advantage of the benefits of server-side filtering, including real-time access to the most up-to-date database, the speed benefit and user-control features of client-side technology.

FUTURE ADVANCEMENTS IN FILTERING TECHNOLOGY

Filtering technology providers have dedicated thousands of man-hours and millions of dollars in research and development to create real solutions for schools, libraries, homes and businesses. At best, the filtering industry is only 7 years old. The advancements in technology over the past 2-3 years alone have brought about products that combine artificial intelligence, advanced algorithms, intelligent keyword databases, computer spidering technology, millions of websites accurately categorized. All of this, while increasing speed, efficiency and manageability through cutting edge system design and engineering.

Internet filtering is not foolproof. The dynamic of the Internet as it relates to filtering can be likened to virus detection software. Products in the virus detection industry use similar algorithms, they monitor packets being transmitted over networks, and they have extensive databases of known viruses and their signatures, yet these virus detection tools are not fool-proof, still network administrators worldwide use these programs to protect their networks because that can offer a high level of protection, even if it is not 100%.

It seems that the opponents of filtering technology wish to cast down the use of any filtering software because it might only be 95-99% effective. Opponents are trying to hold filtering software to a higher standard than other types of similar and related products. Windows and Macintosh operating systems, Internet dial-up connections, computer manufacturers and virtually any software application manufacturer all create and sell products that are not fool-proof and error free. That is why software companies continue to release updates and create new versions, to keep up with the ever-changing marketplace. It is an acceptable part of the computer industry.

Future filtering technology advancements will see the convergence of several of the approaches reviewed.

ARE THERE OTHER ALTERNATIVES TO FILTERING?

Some of the opponents of the Children's Internet Protection Act have suggested that filtering is not necessary; rather, a strong education program that trains children how to have a positive Internet experience is all that is needed.

Although I feel that education is a great way to teach children about the dangers of the Internet, it is surely no replacement for technology protection measures. The biggest problem is that much of the pornographic and illegal exposure to minors is accidental. The National Center For Missing and Exploited Children released a study where 1 in 4 minors reported viewing of unwanted material. It is a well-known fact that in an effort to increase viewer ship, operators of obscenity websites will use unrelated keywords and misleading URL's to attract unsuspecting users to their site. Once the image is viewed, the damage is done and the law has been broken. All the education in the world cannot stop that from happening.

To illustrate this erroneous argument, consider drivers education. Millions of teenagers and adults each year take some form of driver's education or training. Yet the government has put seatbelt laws in place to protect people from harm. All the driver's education in the world cannot stop accidents from happening. Seat belt laws do not guarantee to protect the passenger 100% of the time, in the same way that Internet filters cannot ever guarantee 100% perfect performance, yet they are a great tool to divert the vast majority of Internet abuse in schools and libraries.

Monitoring has been considered as an alternative to filtering. This approach places the burden of policing the Internet on educators and librarians who cannot possibly mange the activities of every Internet user. Once again, if sites are accidentally seen, the damage has been done.

CAN EXISTING TECHNOLOGY PROTECTION MEASURES MEET THE REQUIREMENTS OF THE CHILDREN'S INTERNET PROTECTION ACT?

The answer is a resounding yes. The Children's Internet Protection Act requires that a school or library select a technology protection measure, which they choose, not the government through a public hearing and the creation of an Internet safety policy. The local board determines what to block based upon Federal and state laws as well as local community standards.

This law encourages public education and empowers consumers and local authorities to work together to create a solution that is right for everyone. Schools and libraries have the affirmative duty to protect minors while in their custody. Using technology protection measures shows that educators are taking reasonable steps to protect their kids. Effective filtering technology exists and is effective.

The leading filtering products in the educational space already have the necessary functionality to meet the requirements of the law. Here is a profile of those products:

CIPA related features comparison of the most popular filters in public schools and public libraries.

(provided by David Burt of N2H2)

	N2H2 Bess	WebSense	SurfControl Cyber Patrol	Symantec I-Gear	Secure Computing Smart Filter	8e6 Technologies X-Stop
Separates pornography from sex education, artistic nudity, etc?	[1]Yes	[2]Yes	[3]Yes	[4]Yes	[5]Yes	[6]Yes
Can be overridden at workstation level by teacher or librarian? ..	Yes	Yes	Yes	Yes	Yes	Yes
Ability to set different levels of filtering (age, etc.)	Yes	Yes	Yes	Yes	Yes	Yes
Provides page where student or patron may request that a site be blocked or unblocked?	[7]Yes	[8]Yes	[9]Yes	May be added by school or library.[10]	[11]Yes	[12]Yes
K-12 Market Share (IDC) [13]	19.9%	6.4%	18.2%	5.1%	7.7%	2.6%
Library Market Share [14]	20%	6%	51%	NA	2%	2%

[1] N2H2 offers six sex-related categories: ''Adults only'', ''Lingerie'', ''Nudity'', ''Porn'', ''Sex'', and ''Swimsuits''. Additionally, N2H2 has four ''Allow exception categories'' related to sexual material: ''Education'', for sexually explicit material that is of an educational nature, ''History'', for material of historic value, such as the Starr Report, ''Medical'', for material such as photographs of breast reduction surgery, and ''Text'', for pornographic or sexual material that only contains text. Category descriptions available at http://www.n2h2.com/solutions/filtering.html

[2] WebSense offers five sex-related categories: ''Adult content'', ''Nudity'', ''Sex'', ''Sex Education'', and ''Lingerie and Swimsuit.'' Category descriptions available at http://www.websense.com/products/about/database/index.cfm

[3] Cyber Patrol offers five sex-related categories: ''Partial Nudity'', ''Full Nudity'', ''Sexual Acts'', ''Sex Education.'' Category descriptions available at http://www.surfcontrol.com/products/cyberpatrol_for_education/product_overview/cybernot_cats.html

[4] I-Gear offers six sex-related categories: ''Sex/Acts'', ''Sex/Attire'', ''Sex/Personals'', ''Sex/Nudity'', ''SexEd/Advanced'', ''SexEd/Sexuality'' Category descriptions available at http://www.symantec.com/nis/category_defs.html

[5] Smartfilter offers three sex-related categories: ''sex'', ''nudity'', ''obscene'', ''mature'' Category descriptions available at http://www.securecomputing.com/index.cfm?sKey=86

[6] X-Stop offers three sex-related categories: ''R-rated'', ''obscene'', ''pornography'' Category descriptions available at http://www.8e6technologies.com/docs/Manual_nt_proxy45.pdf

[7] N2H2 end users who feel they are unfairly blocked can request a review, or request a site be blocked at http://www.n2h2.com/solutions/request_review.html

[8] WebSense end users who feel they are unfairly blocked can request a review, or request a site be blocked at http://database.netpart.com/site_lookup/. Users may also test a site to see if it is blocked or not.

[9] Cyber Patrol end users who feel they are unfairly blocked can request a review, or request a site be blocked at http://www.cyberpatrol.com/cybernot/ Users may also test a site to see if it is blocked or not.

[10] I-gear end users who feel they are unfairly blocked can request a review, if the system administrator has created a custom block page. This process is described at http://service1.symantec.com/SUPPORT/igear.nsf/9ad8bd108cd5c204852568bf005eef45/afb45fe0adfcb6af85256919004f1032?OpenDocument&Highlight=0,contact

[11] Smart Filter end users who feel they are unfairly blocked can request a review, or request a site be blocked at http://www.securecomputing.com/index.cfm?sKey=234 Users may also test a site to see if it is blocked or not.

[12] X-Stop end users who feel they are unfairly blocked can request a review, or request a site be blocked at http://www.8e6technologies.com/submit/index.html

[13] ''Worldwide Market for Internet Access Control'', Chris Chistensen, IDC, 2000. Page 11.

[14] ''School Library Journal's School Internet Filtering Survey'', Dr. Ken Haycock, Cahners Research, August 2000. Page 19.

EVIDENCE OF LIBRARIAN SATISFACTION WITH FILTERS

Statistics show a dramatic increase in filter use in libraries.

A new study[1] by the U.S. National Commission on Libraries and Information Science shows a dramatic increase in the number of Public Libraries using Internet filters. In 1998, just 1,679 public libraries offering public Internet access filtered some or all Internet access.[2] In 2000, that number more than doubled to 3,711,[3] representing an increase of 121%.

One in four Public Libraries offering public Internet access now use filters.

Overall, 24.6% of Public Libraries offering public Internet access use filtering on some or all terminals.[4] This percentage represents an increase from 14.6% in 1998.[5] The fact that the number of Libraries filtering has more than doubled, while the overall percentage of Libraries filtering has not doubled is explained by the fact that the total population of Libraries offering public Internet access has increased from 11,519 in 1998[6] to 15,128 in 2000.[7]

The most dramatic gains came in Libraries filtering some Internet access, which increased from 801 or 7.0% in 1998,[8] to 2,265 or 15.0% in 2000[9]. Data from this study indicate that there has been a 65% increase in Public Libraries filtering all

public Internet access since 1998. The number of Libraries that filter all access has climbed from 878 or 7.6% in 1998,[10] to 1,446 or 9.6%.[11] **Nearly 1,500 public libraries (one out of every ten) filter all access today.**

A Survey shows that librarians and teachers are highly satisfied with filters.

In April-May of 2000, respected library researcher Dr. Ken Haycock conducted a survey of school librarians and public librarians on the use of filtering software, for the magazine School Library Journal, a publication of Cahners Research.[12]

An astonishing 90% of public librarians who used filters responded that "the software serves its purpose" either "very well" or "somewhat well".[13]

The study asked both school and public librarians who used filters to rate their level of satisfaction with filtering software in several ways.

SCHOOL INTERNET FILTERING SURVEY,

Page 8, Table 15.

Overall satisfaction with the decision to install internet filter software	Total Sample %	Total Public %	Total School %
Very/Somewhat Satisfied	**76**	**76**	**76**
Very satisfied	37	43	36
Somewhat satisfied	39	33	40
Somewhat/Very Dissatisfied	**24**	**24**	**24**
Some dissatisfied	14	10	15
Very dissatisfied/Not at all satisfied[14]	10	14	9

SCHOOL INTERNET FILTERING SURVEY,

Page 9, Table 16.

How well software serves its purpose	Total Sample %	Total Public %	Total School %
Very/Somewhat Well	**88**	**90**	**87**
Very well	37	48	34
Somewhat well	51	42	53
Not very well/Waste of Money	**12**	**10**	**13**
Not very well	9	8	9
Waste of money[15]	3	2	4

News stories and public statements made publicly by librarians and library patrons reinforce the research

Claudia Sumler, Director of the Camden County (NJ) Library System:

A library committee that had been keeping tabs on filtering technology heard about a sophisticated filtering product being used in local schools. "We got it on a trial basis, and it seemed to work," Sumler said. Called I-Gear, the application is produced by Symantec Corp., maker of Norton AntiVirus software. I-Gear resides on the computer server, rather than on individual PCs, and Sumler said it allows librarians to set a variety of levels for blocking Web sites.

She said that if a patron complains that the technology is blocking a legitimate site, librarians easily can override the controls. "If there are complaints, librarians are to deal with them right away," Sumler said. "We don't want to deny access." . . . "We think this works for us," she said.[16]

David C. Ruff, executive director of the Rolling Meadows (IL) Library:

Expanding the filtering technology to block obscenity and pornography on the library's 20 public computers was based on the library's satisfaction with the Cyber Patrol software and the desire to simplify some administrative procedures, said David C. Ruff, the library's executive director . . . In the week since the filtering policy was expanded, patrons have not noticed the difference, Ruff said.[17]

Joan Adams, director of the Jefferson Parish (LA) Public Libraries:

After several months of wrangling with software companies, parish officials on Thursday finally finished installing filtering software on about 100 computers, cementing the Parish Council's promise to do what it legally can to keep perverts and smut out of public libraries. But for most computer users who sat quietly pecking away at their keyboards, the added restrictions were hardly de-

tectable . . . "I've gotten a lot of 'what if?' questions from the librarians," [Library Director Joan] Adams said. "But the average computer user doesn't even notice it is there."

So far, the WebSense software does not seem to be slowing down the speed of library computers, a common side effect to installing filtering software, library network administrator Dwight Bluford said. The software program also seems to be fairly on target with the sites it blocks. That's because WebSense searches the content of Internet Web sites to determine if there is offensive content, not the keywords, he said. "It seems to be working well," Bluford said. And because it can be locally manipulated, "we also have the ability to immediately block a site if we get a complaint from a patron, or to unblock a legitimate site if it is blocked." [18]

Library patrons and staff at the Plano (TX) Public Library:

James Engelbrecht wasn't too happy when Plano libraries were compelled to install Internet filtering software on their computers late last year. Because he doesn't have Internet access at home, Mr. Engelbrecht uses the computers at the L.E.R. Schimelpfenig and Maribelle M. Davis libraries about twice a week. "When it was first implemented, I wasn't crazy about it," Mr. Engelbrecht said of the filtering policy. "I thought it was another bureaucratic layer." To his surprise, the BESS filtering software hasn't impeded his ability to navigate his way around cyberspace. "It's not burdensome," he said. "If I do find a site blocked, I can ask to use an unfiltered computer." While the controversial policy was debated for a year before it was launched in December, its implementation appears to have been fairly undramatic.[19]

Erin Noll Halovanic, Information Systems Librarian at Kenton County (KY) Library:

Halovanic says if a customer complains about not being able to access a site that's supposedly suitable, she reviews it on an unfiltered staff PC and unblocks the site if she finds it appropriate for the library. And that seems to be a good compromise for Halovanic who admits, "As a librarian, filtering absolutely curdles my blood. It goes against my training as a librarian and my belief in librarianship. However, when it comes to the choice between pandering sexual materials and between protecting people's personal rights, I choose filtering over the alternative." [20]

Margaret Barnes, Director, Dallas (OR) Public Library:

After much conversation and serious reflection, it was determined that a workable approach, enabling the Dallas Library to furnish access to the public, would be the installation of a filter system on all public Internet stations . . . During the almost 1½ years that we have been providing this service we have had no one formally or really informally register an objection about a filter system being in place on the workstations. We have received countless positive comments about this service from all ages in our community.[21]

Judith Drescher, Director Memphis-Shelby County (TN)Library:

The library system's switch to pornography-blocking software has gone so smoothly that it could be considered a nonevent. The Memphis area's chief librarian, Judith Drescher, told a Shelby County Commission committee Wednesday that more than half the 26 public queries about blocking software had nothing to do with the new software . . . In a report given to the commission's education and libraries committee, Drescher stated, "Since installation, the library has received no requests from the public to review and block a site. Library staff has submitted five sites for review, all of which were blocked." [22]

Footnotes for Survey and Quotations

[1] PUBLIC LIBRARIES AND THE INTERNET 2000: SUMMARY FINDINGS AND DATA TABLES. A report based on research sponsored by the U.S. National Commission on Libraries and Information Science (NCLIS) and conducted by John Carlo Bertot and Charles R. McClure. NCLIS Web Release Version, September 7, 2000 (visited February 8, 2000) <http://www.nclis.gov/statsurv/2000plo.pdf> (hereinafter "INTERNET 2000").

[2] U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE, MOVING TOWARD EFFECTIVE PUBLIC INTERNET ACCESS: THE 1998 NATIONAL SURVEY OF PUBLIC LIBRARY INTERNET CONNECTIVITY. A report based on research sponsored by the U.S. National Commission on Libraries and Information Science and the American Library Association and conducted by John Carlo Bertot and Charles R. McClure. Washington, DC: U.S. Government Printing Office, 1999 (visited February 8, 2000) <http://www.nclis.gov/statsurv/1998plo.pdf> (hereinafter "THE 1998 SURVEY"). Out of a total population of 11,519 public libraries providing public Internet access (see Figure 8, p. D-10), 878 or 7.6% filtered all terminals (see Figure 48, p. D-50), and 801 or 7.0% filtered some (see Figure 49, p. D-51).

[3] INTERNET 2000, at Figure 11, p. 18. Out of a total population of 15,128 public libraries providing public Internet access (see Figure 4, p. 11), 1,446 or 9.6% filtered all terminals (see Figure 11, p. 18), and 2,265 or 15% filtered some (see Figure 11, p. 18).
[4] INTERNET 2000, at Figure 11, p. 18.
[5] THE 1998 SURVEY, at Figure 48, p. D-50, and Figure 49, at p. D-51.
[6] THE 1998 SURVEY, at Figure 8, D-10.
[7] INTERNET 2000, at Figure 4, p. 11.
[8] THE 1998 SURVEY, at Figure 49, D-50.
[9] INTERNET 2000, at Figure 11, p. 18.
[10] THE 1998 SURVEY, at Figure 48, D-50
[11] Internet 2000, at Figure 11, p. 18.
[12] SCHOOL LIBRARY JOURNAL'S SCHOOL INTERNET FILTERING SURVEY by Cahners Research, conducted by Dr. Ken Haycock of the University of British Columbia. August, 2000. (hereinafter SCHOOL INTERNET FILTERING SURVEY")
[13] SCHOOL INTERNET FILTERING SURVEY, at Table 16, p. 9.
[14] SCHOOL INTERNET FILTERING SURVEY, at Table 15, p. 8.
[15] SCHOOL INTERNET FILTERING SURVEY, at Table 16, p. 9.
[16] "Philadelphia-Area Library Found Internet Filters Far from Simple", The Philadelphia Inquirer, March 8, 2001.
[17] "Meadows library expands filters on Internet access", Chicago Daily Herald February 25, 2001.
[18] "Library's new Internet filters in place; Program installed; few seem to notice", The Times-Picayune (New Orleans), January 30, 2001.
[19] "Internet filtering accepted; Libraries quietly implement policy", The Dallas Morning News, June 30, 2000.
[20] "I-Gear for Education Success Stories: Kenton County Public Library", Symantec Website, available at http://www.symantec.com/sabu/igear/igear__educ/story__2.html
[21] "Surfwatching the Internet", by Margaret Barnes, Oregon Library Association Quarterly, Volume 3, Number 4—Winter 1998.
[22] "Porn-Blocking Software Works at Library", The Commercial Appeal (Memphis), January 6, 2000.

Mr. UPTON. Right on the money. Thank you. It was exactly 5 minutes. Good work, Mr. Largent. You were always one that could work the clock in the inbounds line. Ms. Morgan, you heard me describe a little bit about the Kalamazoo library situation, where they monitor, and you have to have an access card to be able to use the equipment, and it seems to work based on the numbers that they have suggested to me. Does the Chicago library system have anything like that?

Ms. MORGAN. No. And actually the system that you described sounds very good, but I think you also mentioned when you were describing that that there are policies and situations very widely throughout the country, and I think that's why this law is so good, because it evens the playing field.

It says that this is a standard that we want in our schools and libraries, and it is a standard that we need to support and promote. There are just far too many situations and libraries, and there are stories all across the country of very unacceptable things happening.

And again, you described something that is fairly optimal, where you have the access card for the child, et cetera. Many libraries don't have that. We certainly don't have that.

Mr. UPTON. In your written testimony, you cited a May 2000 news article which discussed the Chicago Libraries Commissioner's view on Internet use in the Chicago public library, and that article stated, and I quote, in the adult areas of the library, patrons are free to view anything, including pornographic sites. The Commissioner—and I presume your boss——

Ms. MORGAN. The big boss, yes.

Mr. UPTON. The big boss, Ms. Dempsey, further states, "Adults have a right to look at those things. Adult terminals have privacy screens if they want to look at it. That's fine. But you don't have to look at it, and I don't have to look at it. People are free to surf.

We are a big city with 3 million people. What is objectionable to one is not objectionable to another."

Ms. Caywood, does the American Library Association stand behind the Chicago Public Library Administrator's position, that anything should go for adult Internet users in publicly funded libraries?

Ms. CAYWOOD. I am a member of the American Library Association. We believe in abiding by the law. As Mr. Taylor pointed out, there are laws that make certain things illegal. I can't speak for every librarian, but I prosecute. I have prosecuted and I will when people break the law.

Mr. UPTON. Now, you in your library in Virginia Beach, you indicated in your testimony that you block chats?

Ms. CAYWOOD. Yes.

Mr. UPTON. Do you have a system like I described that we have in Kalamazoo?

Ms. CAYWOOD. Our solution is considerably different from Kalamazoo's. It is a different community. For example, Virginia Beach is a resort area. One of our big sources of income is tourism, and we would be involved in an endless issuing of little cards if we tried to make a system that was card controlled, and yet accessible to people who wanted to e-mail back home.

What we do is we provide choices. We encourage families to visit the library together and on the whole they do. And they choose what they need at that moment, and it works for them.

Mr. UPTON. You know, as I look at this issue, and as I look back at the debate and the work by folks like Mr. Largent and Mr. Pickering, and Members of the Senate as well, there is an analogy that I take a look at, and that is the old debate that we once had with the National Endowment of the Arts, a federally taxpayer subsidy.

And it points certainly in the late 1980's, and the early 1990's, there were a number of graphic or pornographic events that they funded in a number of ways that alarmed most Members of Congress on both sides of the aisle.

And to his credit, a Member from Michigan, Paul Henry, took up the cause as a member of the then Education and Workforce Committee, and in fact indicated that for dollars to go in the future to fund the arts community. In fact, they would have to subscribe to certain standards.

And a number of the things that they had funded in the past, and you might remember that a jar of urine, with a crucifix inside, and things were no longer to be included as part of the funding.

That resolution passed, and those safeguards that were put into play because it was taxpayer money. Folks wanted to have access to those types of performances in the arts community would have to subscribe—if they were going to get Federal funds, they were going to subscribe to the standards, or else they would not receive Federal funds, and they would have to look elsewhere in that arts community.

And I think that this is very much the same thing. I mean, we are troubled. Again, as I look at my local libraries, they have a system that works. Yet, when we look literally an hour-and-a-half from my home, and when I was in Chicago earlier this week, but

I didn't go into the library there, but you have got a system that is quite a bit different.

And I guess my last question is, since my time is rapidly expiring, Mr. Johnson, do you feel that there is a right for the libraries then to offer pornography then without some type of restriction?

Mr. JOHNSON. Mr. Chairman, I think part of the problem in these debates is the confusion between what is and isn't protected speech. Obviously, obscenity is not protected speech under the First Amendment, as is child pornography unprotected speech.

But the problem is that everybody assumes that this is something that you know when you see it, and that is not the case under the law. It requires that there be a judicial determination.

In other words, unprotected speech is not unprotected until a court says it is unprotected. So you can't just say I know it when I see it. What we are saying is that these filters do tend to be over and under inclusive, and therefore they do block more speech than is necessary and that is constitutionally permitted.

Pornography is in fact protected under the constitution. Pornography is separate from the issue of obscenity. However, I think you also need to note that Congress does not have a carte blanche in order to tie funding restrictions to content. The situation that you are talking about with the——

Mr. UPTON. Well, we do at the NEA.

Mr. JOHNSON. Well, you do in the NEA, and that is a whole different situation. If you look at the case, NEA versus Finley, it specifically said that it would be a different situation if Congress tried to tie that money in such a way that it was viewpoint discriminatory.

What they said was, was that what you did in that situation was that you made decency a part of the requirement. It was not the sole requirement. But they said that if you had engaged in viewpoint discrimination that would be a whole different situation.

If you look at the recent case of Velasquez versus Legal Services Corporation, there Congress tried to tie funding as well to the Legal Services Corporation, and restrict the ability of the Legal Services Corporation to engage in speech, as well as the clients.

There the Supreme Court overturned that and said that was in fact viewpoint discrimination, and that's exactly what happens here under CHIPA. You are engaging in viewpoint discrimination by saying we are not going to have certain types of information in the library, and therefore you install these types of filters that not only don't block all of the types of information that should be blocked, but then block other information as well.

Mr. UPTON. My time has expired, and I am sure that other members will come back to this. I recognize Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. The testimony this morning has been interesting, and I hope useful. I am particularly interested, Ms. Getgood, in terms of with your product specifically. How do you counsel schools and libraries to make the decision to use your product?

Ms. GETGOOD. Well, I guess to start with, we don't counsel libraries at all. In fact, we don't market to libraries. We really focus on schools. And so the first thing I would say is that it is a twofold

process, and one is to have an acceptable use policy which states what you intend the Internet to be used for in the classroom.

And in fact if you are a library that wants to use filtering, but what the rules are in the library. And then the filtering software is to back that up. It is to help you manage that policy.

Mr. SAWYER. Well, it is that precisely. I am not talking about marketing the libraries, but if a library comes to you and says we are in the market for a filtration system, how do you adopt your product to the needs of a particular library?

If Ms. Caywood came to you, she might ask quite different questions than if Ms. Morgan came to you, and yet I would assume that your responses would be different. The software is only a tool that gives them a number of different choices that they can make, and this is specific CyberPatrol.

But also most of the products in this space would be the same way. We offer categories of content, and which they can choose to use, and we offer the ability to override those categories. So if you want to allow specific content and disallow other content, you can do that.

And, in fact, if you wanted to create your own list of content—for example, that which has been deemed to be obscene by your local court, you could do that as well. So the software is really just a tool that they can use to implement their own policies.

Mr. SAWYER. What kind of training do you provide to the people who do the categorizing in your organization?

Ms. GETGOOD. Our researches are all parents and teachers, or trained professionals, who have been taught how to apply our published criteria which are published on our website. And again this is specific to CyberPatrol, but in fact most of the companies in the filtering industry do the same kinds of things.

And so if you are a purchaser of the products, you know in advance what the criteria area, and then we train our researchers very, very intensely to apply those criteria.

Mr. SAWYER. Ms. Caywood comes to you and asks you for your help. What type of training do you provide to the folks who work in her library, and for that matter, for the volunteers who work in her library system in trying to acclimate people to use this technology?

Ms. GETGOOD. In actuality, filtering software is pretty easy to use and it doesn't require a tremendous amount of training. We do give them some background, in terms of what the categories are, and how they can apply them.

When you install the software, in fact you can see if something that you wanted to block was blocked or not blocked, depending on your own choices. But it is pretty easy to use to start with.

Mr. SAWYER. Can a school or library determine what has been blocked?

Ms. GETGOOD. Absolutely. You can tell in two ways. We actually have search engines that you can use to check in advance. Any one of you could check to see what most filters have on their list by going to our web sites and typing in is this site blocked, and it would tell you.

But in fact if you are using the software, it is pretty easy to tell if something has been blocked, because you are either allowed to go there or you are not.

Mr. SAWYER. Ms. Caywood, have you had problems in your system with people who have complained about what has been blocked from them?

Ms. CAYWOOD. No, because all they have to do is get up from a filtered computer and walk over to an unfiltered one. We don't unblock at all in our current situation, because what we offer is a choice of machines. So we have stayed out of that.

Mr. SAWYER. Have you had complaints where inappropriate sites came up on the machines that were dedicated to children?

Ms. CAYWOOD. No, I have not, but then we use I-Gear, which was a local product when we bought it, but it is now owned by Symantec. And we have it set at completely to the fullest extent that it will go.

And we have it that way because we don't want to risk anybody walking by and being surprised. What we find is that when people use a filtered computer their expectation is that they won't be offended.

They are not thinking in terms of legal terms of art, like obscenity and child pornography. They are thinking in terms of I don't want to see a picture of a lion eating a zebra.

Mr. SAWYER. What kind of training do you provide your volunteers?

Ms. CAYWOOD. Now, our volunteers, their job is to help people who need to know this is the mouse, and this is how you move that around. This little thing that goes down the side is a scroll bar, and you move that up and down.

They are not there to deal with content. If someone says, now, how do you or how can I find a site on prostate cancer, they would immediately take that to a librarian, who would come over and work with them on that.

The volunteer's function is to help with acclimating people to using computers. There are still a lot of people that are frightened. You know, that the computer is going to come at them.

Mr. SAWYER. Can I ask one more question? Ms. Getgood, I asked you initially about the best way for a school or a library to decide whether or not to use your product. Do you think the country needs a Federal law requiring libraries and schools to use products like yours?

Ms. GETGOOD. No.

Mr. SAWYER. You do not?

Ms. GETGOOD. No.

Mr. SAWYER. Mr. Chairman, could you——

Mr. UPTON. Do you want to elaborate and then we will go to Mr. Terry.

Ms. GETGOOD. Sure. Basically, because schools are already using filters and they are using them for the compelling reason that they protect children from inappropriate content on line.

They are also using them because they help them preserve band width, and protect them from kids downloading too many files from file sharing services now Napster.

So there is a lot of really good reasons for why they have been installing filters all along. So we don't think a law is necessary.

Mr. SAWYER. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Terry.

Mr. TERRY. Mr. Chairman, thank you. Mr. Johnson, I want to follow up with the Chairman's question. I appreciate the legal discussion and pulling out a couple of pages from your brief, and as a former lawyer, I guess once a lawyer, always a lawyer.

I appreciate that, but I am not sure I really understood the answer in reference to the question. So I am going to ask it again and maybe in a little bit different way. And that is do you believe that people—and let's start with adults—have the right to access hardcore pornography at a public library?

Well, without going into the legalese and quotations of NEA versus Finley and all of that. You and the conglomerate of your organization, and not necessarily you personally.

Mr. JOHNSON. Well, let me first of all point out that when you say hardcore pornography, you are almost getting into the obscenity area, and so you end up in a legal distinction there.

Mr. TERRY. Well, I want to start at the extreme and work back, and I want to know where the ACLU allows us to draw the line, or suggest that we draw the line. Is it hardcore?

Mr. JOHNSON. Well, clearly hardcore, if it is obscenity, is not protected under the First Amendment, and therefore would not be allowed to be seen in the library.

Mr. TERRY. As you are saying, there may be some hardcore that a Judge would say is not obscene, but some is. So that the library should not have the right to control—and then we will work about what control is—access to those types of sites in general?

I am trying to find out that if some are and some aren't, is your position then that it should be unfettered and people should have the right to look at that?

Mr. JOHNSON. Well, I think from a legal standpoint, yes, there is a First Amendment right to access to pornography, because it is protected expression under the First Amendment.

Mr. TERRY. Even through our public libraries?

Mr. JOHNSON. Well, I think the public libraries may have other ways that they can deal with the situation to try to restrict it, and you don't necessarily even need to do it with content based types of regulations.

For example, you can have Internet use policies that limit the time that people spend on the computer. And so they are not going to be spending a lot of time doing that sort of thing.

Mr. TERRY. I agree with that, and so if arousal takes place at 2 or 3 minutes, we cut it off at 2 or 3 minutes? I think we get more absurd by talking about time standards.

Most of the public libraries in Omaha, Nebraska, by the way already have like a 15 minute or half-an-hour time limit, just because there are so few terminals to users, but that is a different issue.

Let me ask it a different way then. If it is case by case in essence, some hardcore may be pornographic, and some may not. Some may be protected speech. Then would it be proper for the librarian, for Ms. Morgan, or Ms. Caywood, to stand there at the ter-

minal and in essence observe and make a judgment about whether or not that site is pornographic?

Mr. JOHNSON. Well, I think you would run into some problems with librarians making those sorts of judgments, and in essence being police. Now, obviously, if there is something that they believe that is illegal, then they should report that.

And I believe that Ms. Caywood has indicated that she does that and many librarians do report instances of what they believe to be illegal activity.

Mr. TERRY. So the line would be that they would be allowed if they observe accessing a pornographic site that they can turn that person in, but they wouldn't have the right to somehow control access to that site.

Mr. JOHNSON. Well, it depends on what you mean by control access. If you have the tap on the shoulder type policy or whatever, and you indicate that they should not continue in that area—and like you said, many of the Internet use policies do that.

Mr. TERRY. Well, that is the point that I wanted to get to.

Mr. PICKERING. Would the gentleman yield just for a second?

Mr. TERRY. I will give myself 10 seconds. What we are now doing is talking about technology versus a person getting to make that type of decision. I yield whatever time I have left.

Mr. PICKERING. To Ms. Morgan, if you have to go tap a man observing hardcore pornography, child pornography, obscenity, what kind of hostile work environment does that create for you, and would not the ACLU be concerned the rights of someone like Ms. Morgan being put into a hostile context by your recommendations of how to restrict access.

That you have no ability to use tools of technology. You only can use someone tapping someone on the shoulder to keep them from observing what is clearly inappropriate. Ms. Morgan?

Ms. MORGAN. I will just say first of all, and I will repeat again, that we are not allowed to do the tap on the shoulder. So that is No. 1. Number Two, if we were, I would find that much worse than having the technology. It seems to me that the technology, the filtering technology, is a much more effective means of dealing with this.

As I mentioned in my talk, these tap on the shoulder policies are much more intrusive than filtering. That implies that a staff person is watching what people are going on the Internet at all times, and looking for this, looking for the child porn, and looking for the hardcore porn.

It also implies that the individual staff person who is observing that patron at the moment is making that decision, which actually there is so many different staff people out there that there is going to be a lot of inconsistency in how or what they think is.

And again I find that much more subjective, the tap on the shoulder idea, which has actually been recommended by the American Library Association. It is much more subjective and actually leads to a maybe much more greater concern about censorship than filtering does.

And regarding sexual harassment, there is no doubt that this is an issue. I think you are all aware that in the corporate world that

Internet porn is a big issue with sexual harassment lawsuits that have been settled, and in a couple of cases over $2 million each.

This is not something that we can dismiss. As I said, it is almost all male porn viewers, and the vast majority of people that work in libraries are women. And certainly many of the—I have had female patrons complain about this.

And when we look at this whole issue of what kind of an environment that we want in a library, I think that this is absolutely key to all of this entire argument and to this law, and that is again why I think it is a good law. Thank you.

Mr. UPTON. Mr. Markey.

Mr. MARKEY. Mr. Johnson, could you draw the distinction for us that you make between filtering devices for K-12 schools and filtering devices in community libraries?

Mr. JOHNSON. I am not sure that I understand the question.

Mr. MARKEY. Do you believe that there are different constitutional protections that should apply for libraries, as distinguished from K-12 classrooms?

Mr. JOHNSON. Well, absolutely, because you have got—when you are talking about public libraries, you are talking about a traditional means of providing information to the community, to not only children, but adults as well.

And when you start trying to restrict the information to the level of what is appropriate for children in a public library, then you are avoiding the entire purpose of the public library. So there are two distinct purposes obviously between a public library and the K-12 educational system.

Mr. MARKEY. So what constitutionally do you believe can be put in place in a library to protect children against it?

Mr. JOHNSON. Well, some of the ways are included in my testimony. For instance, the educational programs, library web pages, and so forth that are already done. Now, I think that some of the characterization has also been inaccurate, because we are not saying that under no circumstances can there be any sort of filtering.

As Ms. Caywood has indicated, they have filtering on some of the computers, but they don't have filtering on the others. It is up to the parents to decide whether the child uses one or the other, and so——

Mr. MARKEY. Inside of the library?

Mr. JOHNSON. Inside the library as I understand it, and so you have got the option there of——

Mr. MARKEY. So you are saying that the library itself should segregate computers for children from computers for adults?

Mr. JOHNSON. Well, I think that would be a permissible area to at least for—particularly for younger children under 13, if you want to have a filtered library terminal for children under 13, for example.

Mr. MARKEY. Why did you pick age 12? Why not age 14. Why 12?

Mr. JOHNSON. Well, the problem is that once you start getting into the teen years, it is more—the courts have not been particularly clear at what stage children start having more constitutional rights.

And so the ACLU's position has generally been in the teen years that they would have more constitutional rights, yes.

Mr. MARKEY. I think probably the Members of this Committee would give more protection to 13 year olds. As you can see, we have broadcast television, and so using the analogy of broadcast television to the library, where adults watch, but children do as well.

And although theoretically the programming in the evening is supposed to be targeted at adults, we know that children watch as well. So as a result, there are standards as to what can be aired, because it is a community environment, even though it is primarily for adults in the evening.

And we use that as a way of ensuring that children, the most vulnerable audience, are not exposed to images, ideas, that their parents don't believe generally speaking that they are prepared for yet.

So that is I think kind of the core of this discussion, because we make that kind of an analogy here. While it may be for adults, that children necessarily are a part of the same community simultaneously.

And again I am kind of sympathizing here with Ms. Morgan, because as you point out, most of these librarians are women. So you could have a small woman trying to tap a large male on the shoulder, saying that is inappropriate for viewing, and that could create quite an unhealthy dynamic in many cases in libraries across the country. So just a tap on the shoulder system might not be the best.

Mr. JOHNSON. That is only one of many options.

Mr. MARKEY. I am just responding to her, and I am trying to eliminate that as something that I might think that we would not want to put a lot of women into a situation of trying to do that.

What are the reactions, Ms. Caywood and Ms. Morgan, when these filtering devices are put into place? Do you get protests from parents that their children are being exposed? What is the level of opposition that you get from parents when the libraries have these filtering devices?

Ms. CAYWOOD. Bearing in mind that in the Virginia Beach public library everyone has a choice which machine to use according to their needs at the moment, or their desire for filtering or not filtering, we have not had any protests.

Mr. MARKEY. You have not had any protests?

Ms. CAYWOOD. No. But we also went through an extensive process of work with the community on what they wanted. I will say that people preferentially use the unfiltered computers. The last one to be turned to is the filtered one.

Mr. MARKEY. And can I just ask one final question of Ms. Getgood. You explained quite well that each one of these sites is viewed by a human being.

Ms. GETGOOD. Correct.

Mr. MARKEY. And as a result, there is no confusion between as you point out a chicken breast than a human. That each site has had a decision made on it by someone who works for you in providing a service to a home or to a school, or a library, that has generically just grouped every single website with that word in it for being blocked; is that correct?

Ms. GETGOOD. That's correct.

Mr. MARKEY. And how successful has it been as a result? We know that it can't be perfect, and I guess that's my view. On the one hand, you can argue that it is an unconstitutional infringement of First Amendment rights of Americans, and at the same time you can argue that it is imperfect in blocking out sites.

But you can't have both arguments simultaneously. Either it is too good or it is not good enough. And we do know that it is imperfect, because something might slip through, but I think that is what parents would prefer to have as something that is in place that can help.

Ms. GETGOOD. On balance, I would say it has been—that filtering software has been very successful in meeting the needs of local communities and local schools, and indeed local libraries to achieve that compelling desire to protect kids from inappropriate contact.

Mr. MARKEY. Thank you.

Mr. UPTON. Mr. Pickering.

Mr. PICKERING. Thank you, Mr. Chairman. Mr. Johnson, just to follow up on our earlier conversation, and knowing the ACLU is very concerned about the civil rights of all Americans, according to a recent USA Today story there are seven Minneapolis librarians that are filing a discrimination complaint with the Equal Employment Opportunity Commission, saying that librarian patrons viewing pornography on the Net have helped create an intimidating, hostile, and offensive working environment.

Would the ACLU be interested in representing those seven librarians who have to work in a hostile work environment?

Mr. JOHNSON. Well, without knowing all of the details, Representative Pickering, I can't tell you that we would or would not, because we don't know all about the specific allegations that the plaintiffs are making. The problem that generally these kinds of cases have is that the working environment under the sexual or under Title VII——

Mr. PICKERING. That's okay. This is about Internet filtering. We won't go into sexual harassment and the details of that. I was just wondering which side you were on; the adults wanting to see pornography in a public place, publicly subsidized, or with the women, the mothers, the sisters, the daughters, who work in libraries who are trying to create a healthy learning environment, instead of having to work in a hostile work environment.

Mr. JOHNSON. We are on the side of the Constitution, sir.

Mr. PICKERING. I am not exactly sure, because the bill specifically addresses that, which is I believe in your testimony not constitutionally protected speech, child pornography, which I think you would agree is not constitutionally protected speech; and obscenity, using the well established precedent in terms and definitions of obscenity, is not constitutionally protected speech.

And the third criteria would be harmful to minors, which is also a well established term of art, and using community standards and community input. The agenda here really is not to look at in my view whether technology, filter technology, is efficient, or whether it underblocks or overblocks.

But I think it is an extreme agenda to give your interpretation of the Constitution to access for all people to things that you wish were constitutionally protected.

And as you testified earlier, that children as young as 12 or 13 should have access to this type of material, and if you look at the American Library Association and their bill of rights, they say the American Library Association opposes all attempts to restrict access to library services, materials, and facilities based on the age of library users.

It goes on to say in another place that libraries and librarians should not deny or limit access to information available via electronic resources because of its allegedly controversial content, or because of the librarian's personal beliefs, or fear of confrontation.

I think it is clear that there is an extreme agenda to legitimize pornography and obscenity, and make it accessible to people of all ages and all places, regardless of the danger that can create, or the hostile working environment that it could create. The other——

Mr. JOHNSON. That is a mischaracterization of our testimony, Representative Pickering, but that's fine.

Mr. PICKERING. Well, let's talk about mischaracterizations and distortions of the COPA Commission's finding, saying that it did not make—that it made a finding that filter technology is effective. It did not make a recommendation for or against.

It was neutral and it was silent. You characterized the COPA Commission's recommendation as against filtering technology. That is a distortion and a mischaracterization.

Mr. JOHNSON. That is not what I said, Representative Pickering. What I said was that they specifically did not make a recommendation for or——

Mr. PICKERING. You said that Congress did not follow their recommendation. They were silent.

Mr. JOHNSON. The Congress did not follow their recommendations because they did not include mandatory blocking. What they did was they made several recommendations——

Mr. PICKERING. Didn't the COPA Commission find that filtering technology is effective?

Mr. JOHNSON. Excuse me?

Mr. PICKERING. Wasn't that one of their findings? Did the COPA Commission find that filter technology is effective?

Mr. JOHNSON. They found that it was very problematic because it overblocked information, and I have a copy of the COPA Commission report here.

Mr. PICKERING. And they also had a finding that it was an effective means, an effective tool.

Mr. JOHNSON. They found it was an effective tool in some circumstances, but it was not effective necessarily because of the overblocking. And they found that there were some problem with regard to the First Amendment. And I have a copy of the COPA Commission report if you would like to take a look at it.

Mr. PICKERING. As I listened to your testimony, and as I look at the ALA's bill of rights, I do think that the agenda here is to make access to this type of material available to all, with no restrictions, and I think that is not best for our children, and it is not best for those who work in libraries or schools.

If you look at your other option, instead of a tap on the shoulder, segregating adult and minor computers, you could set up a haven for child predators and pediphiles to be able to go into public li-

braries, escaping legal scrutiny to have the access to that type of information, and with no supervision.

I just don't see any workable way to find acceptable ways to protect our children and the work place. Filter technology is an effective way, and it is not an obtrusive or intrusive way to accomplish our objectives here.

I do think it is constitutional, and Mr. Chairman, I yield back.

Mr. UPTON. The gentleman's time has expired. Mr. Largent, do you want to go now or do you want to come back?

Mr. LARGENT. I will go now. Ms. Caywood, are you a parent?

Ms. CAYWOOD. No, I am not.

Mr. LARGENT. Mr. Johnson, are you a parent?

Mr. JOHNSON. No, I'm not.

Mr. LARGENT. Mr. Johnson, do you believe that exposure to obscenity is harmful minors?

Mr. JOHNSON. Well, I think that minors can be exposed to obscenity under many circumstances, and I think it is the parent's responsibility to educate their children.

Mr. LARGENT. No, that was not the question. The question is do you personally, and I am not talking about the ACLU. Do you personally believe that exposure to obscenity, or even legal pornography, is harmful to minors? I am talking about 8 and 9 year olds, 10, 11, 12, 13; is it harmful to them?

Mr. JOHNSON. My answer is with the parental supervision, no, because the parents can explain what the difference is, and why this is inappropriate material. I mean, that is what a parent's responsibility is to do, is to——

Mr. LARGENT. So you would say that without parental supervision it is harmful?

Mr. JOHNSON. Well, I am not sure that there has been any study that indicates that it is necessarily harmful. But what I am saying is——

Mr. LARGENT. So then you would say that exposure to pornography, legal or illegal, is not harmful? I am just asking for a yes or no answer. You said it was not harmful if under adult supervision, and then I said, okay, without adult supervision, it is harmful; and you are saying no. So I am confused by your response.

Mr. JOHNSON. Well, what I am saying——

Mr. LARGENT. Is or is it not harmful?

Mr. JOHNSON. I don't believe it is probably harmful. What I am saying is——

Mr. LARGENT. Okay. That's all I needed to know. That is what I needed to know. Forty percent of children—we have been told that 40 percent of children are first exposed to obscenity at libraries or schools. Ms. Caywood, do you believe that the Children's Internet Pornography Act is an unnecessary Federal mandate?

Ms. CAYWOOD. We are doing just fine the way we are. You brought up the fact that I have never had children. However, I have been entrusted with other people's on many occasions.

Mr. LARGENT. Sure.

Ms. CAYWOOD. Two families were willing to let me take their 12 year olds to Richmond to testify to the COPA Commission. I have been a children's librarian for 28 years.

Mr. LARGENT. That's fine, but let me get back to my questions, because we have got a vote on the floor. You said that someone coming into your libraries at Virginia Beach can choose a filtered or an unfiltered computer. Can a child choose an unfiltered computer at your library?

Ms. CAYWOOD. Yes.

Mr. LARGENT. They can?

Ms. CAYWOOD. Yes.

Mr. LARGENT. Can you check out Playboys to minors at your library? If a 9 year old comes in and says I would like to check out the Playboy, would he get it?

Ms. CAYWOOD. We have never been asked to have a prescription to Playboy.

Mr. LARGENT. So you don't have any pornography in your library, any written pornography?

Ms. CAYWOOD. Well, we certainly have some art material that parallels the NEA material that some of you would not be happy with.

Mr. LARGENT. Why don't you subscribe to Playboy?

Ms. CAYWOOD. We have never been asked.

Mr. LARGENT. By who?

Ms. CAYWOOD. By our community.

Mr. LARGENT. By your committee?

Ms. CAYWOOD. By our community. We have a process where people request materials that they would like to have in the library, and that's not been requested yet.

Mr. LARGENT. But if you had Playboy as a subscription at your libraries would you check it out to an 8 or 9 year old?

Ms. CAYWOOD. We don't check out our magazines either. They are used in the library.

Mr. LARGENT. Could a child have access to a Playboy if you had it in your library?

Ms. CAYWOOD. Yes, I imagine that they could use that like any other library material if we had it in the library.

Mr. LARGENT. Right. If you had it, then they could have access to it. That was a hard question to get to, but we did it. Mr. Taylor, you talked about the legal terms of art that are pretty well defined by the Courts, whether it is obscenity, or harmful to minors, and so forth.

And you said the question is not—I mean, what I drew from that was the question is not what are you going to block, but how you are going to block it; is that correct?

Mr. TAYLOR. Well, the Act leaves it up to the school or library to work with their filter to decide what kind of sites they want to block within those three classes. I put the three tests in my testimony because each of those three tests excludes the kinds of sites that the ACLU and the American Library Association complain might get blocked by mistake.

And CHIPA doesn't ask any library or school in the United States under any of those three categories to block any images or written material that deals with abortion, or sexual orientation, or sex education, or hate speech, or Nazis, or art, or all those kinds of categories of agendas are not harmful to minors, and they are not obscene for minors.

They are not obscene for adults under the Miller test and they are not child pornography under the Federal or State statutes. They don't have to block them under CHIPA. If a library wants to block it, just like if a library doesn't want to carry Playboy, they don't have to.

But the policy of, well, if we want to carry Playboy, we are going to give to kids, and if we want to have an unfiltered terminal means that what Congress is dealing with is that you have got terminals where you walk up to them and you type Lolita into a search engine, and you get child p porn. If you type Deep Throat, you get hardcore porn, and that is what the CHIPA bill says you must try to stop.

Mr. UPTON. Excuse me for interrupting, but we have about 3 minutes left. We are going to come back. Mr. Shimkus has additional questions. So we are going to come back in about 15 minutes. We have two votes.

[Brief recess]

Mr. UPTON. That is the last vote for a little while, and I know that I talked to a number of Members on this vote, and again they apologize for not being here. We have got another major subcommittee in action underneath us in 2123 Rayburn, and a number of us are on both subcommittees.

So I am absent down there and they are absent up there, but I know that Mr. Shimkus had some additional questions. The gentleman recognizes the gentleman from Illinois.

Mr. SHIMKUS. Thank you, and I apologize to the panel, because usually I would have been very supporting in getting done, but this is such a pressing issue and of concern that I really wanted to have a chance to ask some questions and get into a short discourse, especially since I wasn't able to be here for opening statements.

I knew that there were going to be votes at 10:15, and so I just stayed over in the Capital where I was. I was trying to make good use of my time. And it is too bad that Mr. Markey is not here, because maybe his site was blocked not because of connections as were talked about today.

Maybe it was just his ideological stand that someone filtered out, but that is a future debate that I always—he and I have a good time, and Ms. Caywood, it is pronounced CHIPA from what I understand, and part of the reason I think is because of Chip Pickering.

And I have harassed him about naming that in his—in giving him that much credit to have a bill actually named after his first name. So he is not here to harass either. So I better get down to business.

A couple of things that I wanted to try to briefly cover. I have to two things, Mr. Chairman, if I have permission to submit into the record.

Mr. UPTON. Without objection.

[The information referred to follows:]

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Lewis Center for Educational Research

To the President of the United States and the Honorable members of Congress,

As the Principal and government teacher at the Academy for Academic Excellence, I am overwhelmed by the maturity and commitment of my students. Our school is a Charter School of approximately 550 Kindergarten through twelfth grade students. Our test scores are high, parent engagement a requirement for admission, and safety a very high priority. When one of our second grade students, under adult supervision misspelled the name in the URL of a children's website he was automatically connected into a sexually explicit porn site. Immediately he did as he had been taught and called the teacher and clicked the X box. Instead of the site closing down it moved to another explicit picture, each click did the same. The child was removed quickly and the computer turned off. This week Snoop Dog joined Hustler Magazine to create a porn rap video. At the news conference, they insisted that it was only for adult audiences and that they wanted to protect children. I don't know about you, but I don't know any adults who listen to Snoop. The truth is, that pornographers cannot continue to increase profits without attracting a bigger audience. Like the elephant in the room that no one will talk about, we all know that this industry targets hormonally active teenagers. It is simply a lie that they want to protect. My class has come up with a simple, Constitutional way of keeping adult porn off computers. A way to allow every parent, whether computer literate or not to block unwanted materials. I hope that you will take seriously the efforts of these young people and consider their proposal as a relevant and practical solution.

Sincerely yours,

Rick Piercy, Principal

Preservation of the First Amendment

No man, woman, or child that has ever lived has been able to escape the perpetual forward momentum of time. Many people fail to recognize the effects we have branded into our own lives as a result of the actions we have taken as time has flown by. As the world has spent time, there has been one technological advance that has changed the way the world will be operated, forever.

Without a doubt our greatest technological advance was the creation of the World Wide Web, or Internet. However, with this great achievement comes the ever-greater responsibility of how it can be most effectively used and also regulated.

There is an organization named SPEAR that believes that the World Wide Web, while extremely beneficial, has one major complexity that is negatively effecting the youth of America. SPEAR states in a cover letter, that they plan to send to the United States Congress, that, "The Internet provides a source of unlimited economic value, improved worldwide communications, and has made a vast amount of educational information easily accessible. But, the World Wide Web also contains an un-harnessed library of sexually explicit material…" SPEAR challenges that this material has become too readily assessable to America's youth.

SPEAR believes that this problem has a logical, simple, inexpensive, and most importantly non-obtrusive solution. However, their proposed solution to this situation concerns the basic first amendment right that applies to American citizens.

Throughout this paper I intend to prove that the solution presented by SPEAR, concerning minors being so easily capable of viewing pornography on the internet, does not impede on the first amendment right of the applicable pornography providers. Furthermore changing the URL suffix of any pornography site will not cause any significant negative impact to the majority of the concerned publishers from an economical standpoint.

The acronym SPEAR stands for Students Preserving Everyone's *first* Amendment Right. High school students at the Academy for Academic Excellence in Apple Valley, California started this organization during September of the 2000 – 2001 school year. It is run and operated by high school students at the academy, and advised by the school's principal, Mr. Rick Piercy.

SPEAR's proposal is to specify the URL suffix of all Internet sites containing adult images and erotic material. This enables any person who wishes to view this material to still have that capability while protecting the rights of the people who do not wish or cannot legally view pornographic material. For instance: The web address, WWW.ADULTSITE.COM would be changed to WWW.ADULTSITE.XXX.

At first glance, SPEAR seems to be yet another stereotypical organization that wishes to have published pornographic material on the Internet censored. However, SPEAR realized that Internet censorship is an exhausted argument that has been on the lips of countless people since the Internet was created. SPEAR further realizes and acknowledges that Internet censorship would violate the constitutional rights of pornographic publishers.

Two hundred and twelve years ago our country ratified a constitution along with a bill of rights. The bill of rights lists ten basic amendments to the constitution that insures the American people that the U.S. government can not impede on any of our basic natural rights. The first amendment to the constitution is written as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."

This amendment gives us the right as U.S. citizens to freely express any opinion through publication, belief, or speech. The United States Supreme Court ruled that, "Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works fall within the First Amendment guarantee." (Schad v. Borough of Mount Ephraim, 452 U.S. 61, 65; 1981) This, SPEAR believes, includes the publication of pornography.

SPEAR's first point of debate states that in no way are they trying to censor any material in the Internet. They know and understand that the first amendment provides the right for the pornographic industry as a whole to publish any material they construct. Instead their desire is to make any explicit material contained in the World Wide Web as easy to keep away from minors as it is to keep other pornographic material, such as pornographic magazines, out of their "reach".

Another constitutional question that SPEAR presents concerns zoning laws that have already been made and put in action, that accomplish the same goals that SPEAR

wishes to accomplish. In effect, SPEAR's objective, if passed, would be an Internet zoning law. Although it has been duly addressed that the constitutional first amendment applies to pornography publication; Steve McMillen, the author of Adult Uses and the First Amendment states that it is constitutional for a zoning law to be passed because zoning laws merely, "regulate the time, place and manner of protected expression." (http://www.law.pace.edu/landuse/adult.html#li. Zoning Adult Uses).

In 1979 the Supreme Court ratified the first zoning law named the "Anti-Skid Row Ordinance" (Young v. American Mini Theaters, Inc.). Today, there are literally thousands of zoning laws that state for example that adult an book store may not be operated within a specified distance from a church, school, or another adult book store.

SPEAR believes that the Internet should be the same. They do not want any pornographic material taken off the Internet, or even censored in any way. Their goal is to have this material placed specifically in its own area instead of having this material intertwined with the rest of the World Wide Web. Placing pornographic sites in their own category would simplify the ability for adults to keep minors from viewing Internet pornography while still providing easy and complete access to pornographic web sites to any adult that wishes to view them.

The United States Constitution was drafted for six major reasons that are listed in the Constitution's Preamble. One of those six reasons was to, "...insure domestic Tranquility..." Webster's Dictionary of the English Language defines the word tranquil as the following: "free from agitation or perturbation, peaceful." SPEAR argues that Internet pornography has created arguments and chaos rather than tranquility, yet, the pornographic industry argues their case behind the first amendment of the same

Constitution that was written to provide America with the peace that they are disrupting. Furthermore, while the first amendment provides pornographic Internet sites immunity from being censored, SPEAR has not made a single argument in support of censorship. All arguments proposed by SPEAR thus far have in one way or another been constitutionally ratified if viewed in correlation with a pertinent existing law.

SPEAR makes another strong point in stating that the first amendment should also provide any person the right to not view or be exposed to any material that one may find offensive. The problem concerning pertaining to this matter is that some Internet pornographic sites are purposely deceiving people, causing people to view their material whether or not they intended to. SPEAR believes that pornographic publishers are using the first amendment to justify deception, all for nothing more than economical profit.

A problem that SPEAR sees with some pornographic web sites pertaining to this matter is that there are some pornographic web sites that place their material behind a deceiving name to receive customers that they wouldn't have normally acquired if their URL described the material within their site. Case in point, it is very possible for any person researching information on the White House to naturally visit the web site, WWW.WHITEHOUSE.COM. Nevertheless, that address is a XXX pornographic site. That web site has now had its material exposed to a person who may not have wished to view pornographic images. If it were a minor visiting the same web address, the deceiving factor of this web sites name would cause a minor to view material that is illegal for them to view. The proper address to find information pertaining to the White House is, WWW.WHITEHOUSE.GOV (.gov standing for government). Just as there is a specific URL suffix for government web addresses, SPEAR asks that there be a specific web address

suffix for pornographic sites to prevent deception. If WWW.WHITEHOUSE.COM were changed to WWW.WHITEHOUSE.XXX any person not wishing to view pornography would have been spared the surprise experience of the contents of that web site.

There are many more arguments concerning this issue from an economical point of view. One more major point of conflict concerns the economic impact of segregating pornography Internet sites from the rest of the .com sites. A common misconception is that pornographic sites will be bankrupted by having to "move" their site from a .com to a new URL suffix. However, pornographic Internet sites "move" more often than people realize. Due to blocking software, thousands upon thousands of Internet pornography sites change their name, or move, every day to avoid being detected by the software. In reality, it is more expensive for the consumer to buy and constantly upgrade a blocking software program that is consistently behind than it is for and Internet pornography provider to "move" their site.

A 1999 newspaper article stated that nearly two thirds of all pornographic Internet web sites are free web sites have incomes that are purely reliant on advertising banners of other pornographic sites that charge monthly fees. Every time an Internet web site is visited, that web site is said to be "hit". Pornographic sites that do not charge any fees for viewers to access their material are paid by how many hits they accumulate, and are by the pornographic sites that have advertisements on their particular page. If so many of these sites depend on each other for their incomes, how can they justify constantly "moving" their sites if the movement of the sites is so economically inefficient? After all, the Internet pornography industry as a whole cleared a net profit of 100 billion dollars last year.

As a nation we have tried to implement many plans that addresses Internet pornography. Each of these proposed solutions, from censorship to blocking software, provides us with many questions. There are more questions to be answered about SPEAR and their aspirations. But, two questions have been answered.

If the URL suffixes of all pornographic sites were to be specified, it would not financially bankrupt the industry and would not violate any their first amendment constitutional rights. SPEAR's resolution gives any computer user logged onto the internet the absolute knowledge of whether or not the site they plan to visit is or is not a pornographic site without constricting the computer's capability to access any desired web address.

When all is said and done SPEAR's proposal would preserve the first amendment rights for pornographic providers, as well as the millions of Americans who use the Internet day by day.

The general issue presented in this paper is not new to anyone, and is not new to the United States congress. But, in this act, of this tired drama, there is a hint of originality. "Run of the mill", "everyday" high school students have started a formal organization and have set a goal to accomplish a feat that is entirely out of character and unexpected. It is socially expected of older adults to care and give their time to an organization such as SPEAR. But, as time progresses, a group of standard setting students has decided to take advantage of being in the right place, at the right time. After all, the course of history was never changed by common place actions. Ordinary people

performing extraordinary tasks rewrote history that would have, without their accomplishments, been bland.

As time unrelentingly moves forward, more and more pages of history are written. Whether as individuals, minorities, or large majorities, history acts as a mirror that describes for us how those who have lived through historical events, of any magnitude, have judged the decisions that have been made, and the actions that have been taken. As more history is written, the future provides all of mankind the opportunity to make our history exciting lifelike illustrations that detail our every step along a never-ending path of time. If one were to reflect today on history itself, it would show us what has been important to a people that perpetually change as each era of history is elaborately woven.

When the Internet was created, a new page of history was drafted. But, it is reactions of groups like SPEAR to this great achievement that can make that page of history come to life to those that may read about it in the future. There is an eternity of future that is yet to be written. But, soon that future will be history, who will be its author?

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11. United States. Supreme Court Anti-Skid Row Ordinance, Young v. American Mini Theaters, Inc.

Mr. SHIMKUS. And then I also have—I am not going to ask for this petition to be submitted for the record, because it is quite large, but I am going to give it to you just so you can look through it.

And it is not from my district. It is from a school in California, and it is in Congressman Lewis' district. And the two things that I want to submit is a letter by the Lewis Center for Educational Research, Academy for Academic Excellence; and the two portions of the letter I want to especially for you all to have is that one of our second grade students, under adult supervision, misspelled a name, and we all know the story.

The URL—the children's website was automatically connected into a sexually explicit porn site. Immediately he did as he had been taught, and called the teacher, and clicked the X box, and instead of the site closing down, it moved to another explicit picture. Each click did the same, and the child was removed quickly and the computer turned off.

The truth is in another part of the letter that pornographers cannot continue to increase profits without attracting a bigger audience, like the elephant in the room—this is from the principal of the school.

Like the elephant in the room that no one will talk about, we all know that the industry targets hormonally active teenagers. It is simply a lie that they want to protect. My class has come up with a simple constitutional way of keeping adult porn off computers.

A way to allow every parent, whether computer literate or not, to block unwanted materials, and I hope that you will take seriously the efforts of these young people and consider their proposals as a relevant and practical solution.

I want to read that also with the petition and also for the record, a paper written by Brandon Smith on the 23rd of February. It was a paper written for a school project on the First Amendment, and I know that the ACLU would probably like to—this young man actually did a very good job of talking about it.

And his basic premise stems from the petition and all this stuff, where an issue that I have addressed a couple of times is, and Congressman Largent and I were talking during some of the opening statements with the Triple X domain name.

So I am going to throw that out for everybody, and if we could just go down the line. A lot of us are struggling with the Triple X domain name, and from the industry folks, or the filterers, I want to know does that help?

From the ACLU, the constitutional issue; and why is it no different than zoning ordinances of local communities. And if we would address legislation in a bill that would not mandate people to leave their sites. But we actually know that these pornographic sites move around anyway.

But we have a location where those people can go if that is their desire, but it is more helpful in the filtering why not. And, Mr. Taylor, why don't you start with that? How would you address the Triple X domain name?

Mr. TAYLOR. So far our organization, the National Law Center for Children and Families, has been opposed to the creation of a Triple X or a top level domain for the pornography syndicates. I

don't want to elevate them to the same level that the worldwide web consortium that government and education, and commerce, and military are. All the pornographers would put their sites there, but they would not get off the cache card or the dot.com. The law would be challenged——

Mr. SHIMKUS. Let me go on to a discourse. Let me go, but in marketing, as in Triple X adult book stores, they would draw. They would draw the people who are searching for that type of material. Do you agree?

Mr. TAYLOR. It would make it easier for a filter to block it if they were all there and nowhere else. But they are not going to be just——

Mr. SHIMKUS. They would be elsewhere, too. I don't think we are going to be able to prohibit elsewhere.

Mr. TAYLOR. And that's why I don't think it is going to help. All it will do is that if a kid goes up to an unfiltered terminal in a library, and punches in give me everything on the X-domain, he gets it all. So it makes it easier to follow.

Mr. SHIMKUS. Well, I don't think we are going to limit filtering software.

Mr. TAYLOR. No.

Mr. SHIMKUS. I think there are some people who are proposing it, but I don't think that is going to happen. But the issues of a Triple X domain help in the filtering software?

Mr. TAYLOR. I don't think so. I think that the filtering technology uses the same search technology to find the pornography without it being here.

Mr. SHIMKUS. Well, let me go to the industry folks. Ms. Getgood and Mr. Ophus, will the Triple X domain make it—will it help?

Ms. GETGOOD. I don't think it will help solve the problem. I think it might help block the material in that Triple X domain more efficiently. However, it doesn't prevent material being in other domains, and it doesn't get away from the issue that who administers and who is responsible for maintaining that Triple X domain.

I mean, you know the joke is that it is a trip to the White House that no kid should take, and that is to WhiteHouse.com, and people who name their websites that sort of thing aren't necessarily going to be that responsible to go into a Triple X domain. So there is an issue of it is just not going to achieve the goal.

Mr. SHIMKUS. Mr. Ophus.

Mr. OPHUS. I would agree with Ms. Getgood on that point. It is something that we as a company considered. We use very sophisticated computer spidering technology that basically has these lists of criterion that constantly scour the Internet looking for these types of websites.

And then those sites are put into a cue, and like many of the other filtering products are subjected to human review. So the Triple X domain would obviously make it easier to put those sites into the cue, I think they would also make it easier for some kids to find those sites though.

So I think there is benefits and negatives on both sides.

Mr. SHIMKUS. Mr. Johnson, briefly, the First Amendment debate on our Triple X site Mr. JOHNSON. Yes, sir. On one of the few occasions that I guess Mr. Taylor and I agree that this would not be

a good idea. The First Amendment zoning laws, where they talk about secondary effects do not apply when you are talking about specific content, and there is a Supreme Court case of Booz versus Barry, specifically said that when you are talking about content that the zoning analysis does not apply.

Mr. SHIMKUS. The other issue that I would like to briefly address is an issue that as a former high school teacher that we have an impossible time of ever identifying when a child becomes an adult.

In other societies, it was when they killed their first bear, or when they went to their first battle. We can't do that, and that's why 12 year olds and 13 year olds, 16 year olds—what is it, 16 you get your drivers license, and 18, you can serve and carry a weapon in the military, but you can't drink alcohol until you are 21.

This whole debate of when is an adult an adult has always been troubling for me, and I don't know if in society if you can ever identify that. But that makes it also difficult in this debate.

And I raise that because, Mr. Johnson, you talked about why libraries and not schools, and you went into—well, at least in your written testimony, one of my questions was why are you fighting against libraries and not schools.

And that question was sort of asked by another Member, and you were trying to address the age of the adult access of material at libraries, where that is not the case for children in schools.

But if we have this debate about when is an adult an adult, there is problems in that area that I see. Why are you not as concerned about schools, or if you are successful in the position, along with the American Library Association, in prohibiting filtering, would you next turn to schools?

Mr. JOHNSON. Well, we are not ruling out a challenge to the schools, but because of the different missions between public schools and the public libraries, it made sense to only pursue one at a time.

And so we have chosen to pursue with the public libraries at this point, but we have not ruled out a suit against the schools.

Mr. SHIMKUS. And the last question, Mr. Chairman, with your indulgence, for Ms. Caywood. I visited my local library, who was opposed to CHIPA, or CHIPA as I call it.

And, of course, they have the libraries position, but they are a smaller library. They are not the Chicago library system, where you may have a hundred times more users than people to be able to monitor. So I really have a great appreciation for Ms. Morgan and her position.

But they were very strong advocates for the library position. While you may not be supportive of the content of CHIPA, do you support the spirit of the law?

Ms. CAYWOOD. That is an interesting question. I think that the spirit of the law is to create a healthy environment for learning, I would have to say that I am certainly for that.

If the spirit of the law is that the Federal Government knows more than local government, then I would have to say that I disagree with that. What do you think is the spirit of the law?

Mr. SHIMKUS. I think the spirit of the law is to protect children from pornography, and anyway we can, even if there is some failures in the system. The other question I was going to ask, but I

am going to only take my 10 minutes of questioning time, was to ask what is an acceptable rate?

If we can filter out 99.9 percent, I think that is pretty darn good, and as a parent, I would appreciate 99.9 percent assistance, understanding that no one is perfect. You cannot get everything.

Pornography has a disastrous impact, especially on hormonal young boys, and it helps lead to destructive lifestyles, destructive choices, and it is a detriment to our society.

And if we don't do something to be involved in protecting our children, I don't know who is going to do it, and that's what I think the intent of the law is. Mr. Chairman, thank you very much, and I would like to thank you all for coming back during the break and allowing me a chance to ask some questions. I appreciate it, Mr. Chairman. Thank you very much.

Mr. UPTON. Before the gentleman leaves, I would note for the record that it is CHIPA for Chip Pickering, and not CHIPA.

Mr. SHIMKUS. I am not going to call it CHIPA. I refuse.

Mr. UPTON. I have one additional question, and then I will yield. I think both Mr. Largent and Mr. Pickering have additional questions, and if other members come, I will obviously entertain their questions as well.

I look at myself as a dad first, and as a Legislator second, and I guess, Mr. Taylor, the question I have for you is do you think that it is a right for Americans visiting a local library, a public library, using a computer system that is funded by the taxpayers, and literally all of them because of the E-rate that goes into the schools and libraries, that they have a right if they choose to have access to hardcore pornography?

Mr. TAYLOR. My answer to that is no. I mean, the Internet access funded by the Government is not an entitlement program. It is a gift. And it is intended to make these technologies available to people.

And so if the Congress says to libraries and schools that we want to give you all this money so you will have access to the Internet, but we don't want you to give access to the porno industry, or the pediphiles to our kids, or even to adult addicts.

And so libraries and schools don't have any right, nor duty, to give pornography to adults or to minors, and adults don't have a right to go into the public library. They can't demand that the library carry Deep Throat in their video collection, or that they subscribe to Playboy or Hustler.

They can't demand that the library change its selection policies. A library doesn't carry porn anywhere else in its system. All this bill does is say for the kinds of materials that you would never choose to put on your shelf, here is a technology means to prevent it from coming in uninvited.

Mr. UPTON. Mr. Johnson, do you think that they have a right if they want? Do they have a right to use taxpayer funded equipment to access pornography, something like a Deep Throat or something else if that is available?

Mr. JOHNSON. Well, your question first of all assumes that this technology is going to stop that, and we know that it doesn't.

Mr. UPTON. But we heard from Ms. Getgood and Mr. Ophus that they made some pretty good advances from where things were a few years ago.

Mr. JOHNSON. Well, as late as yesterday, there was a site blocked for breast cancer information. Once again, we always hear that this is not the case.

Mr. UPTON. Well, let's say we get the technology that it is going to be better than 90 or 95 percent that will filter out Deep Throat. Do they have a right—can someone walk into the Chicago Public Library, where they don't have a system like they have in Kalamazoo, or my home town of St. Joe, do they have a right to say, hey, I want to get access to that, and I am going to play it right here; yes or no?

Mr. JOHNSON. Well, the strictly technical answer is yes, if it is protected under the Constitution. And as I have said, there is a distinction between what is obscenity and what is pornography.

But again if you look at the statistics of the amount of information on the web, there is no way that there is a human intervention on every one of these websites. There is no way physically that this can be done.

Mr. UPTON. Ms. Morgan, you had something additional to say to another Member that had some questions. If you could just respond, and then I will yield to Mr. Pickering.

Ms. MORGAN. Actually, it was just in a comment about the whole concept of selection in public libraries. I have been a librarian since 1989, and I am the architectural librarian, as well as the—I am in charge of all of the arts periodicals.

In that department where I work, as I said, I make a lot of selections every day. If somebody came up to me and asked me to purchase for the library collection some sort of a pornographic magazine because they thought it considered great art, I would say no.

Again, we make those decisions all the time. In the art department, we do have some of the so-called controversial art books. Those are kept in closed reference stacks. People have to leave an ID to look at them.

Often times Robert Maplethorpe is brought up in these discussions, and even the Commissioner of the Library brought up the Maplethorpe books that we own when I was making complaints about the hardcore porn.

I think that is a very bad argument. I think that we can make a distinction very clearly between the things that we select for our departments, even those few art books that we have in closed stacks, and this vast array of pornographic material that is on the Internet; everything from bestiality, which yes indeed I have seen people look at that, to the child pornography.

I don't think that there is anyone that can make the argument that those two concepts are the same thing. I see them as very different situations.

Mr. UPTON. Mr. Pickering.

Mr. PICKERING. Mr. Taylor, Mr. Johnson raises constitutional questions as to whether this by overblocking or underblocking would not meet the least restrictive means test, or that it would have a viewpoint discrimination. How would you respond to those points that Mr. Johnson raises?

Mr. TAYLOR. The first is that I hope that the Department of Justice says that the least restrictive means test doesn't apply. This is not a statute passed by Congress under the police power to put obligations on the public for public health, safety, and morals.

This is not a crimes statute, like the CDA or COPA was. This is a funding measure which should be judged by the Courts under a much different standard. If you don't want the Federal money, you don't have to abide by their wishes.

This is not an obligation to the public. This is only a trade in exchange for assistance. But because they don't have a right to get that material—and one of the important parts of the answer is that in this Communications Decency Act in 1996, one of the parts of the Act that wasn't challenged and is still on the books is the good samaritan immunity provision that says no civil liability can attach to any person who voluntarily takes actions to block access to material that is obscene, offensive, even if it is protected speech.

So libraries don't have to give people pornography even if it is protected. They don't have to give them access to breast cancer sites even though they are not illegal, and even though CHIPA says not to block them.

But CHIPA doesn't ask them to block any of the sites that they have complained of, and they would only block a breast cancer site if you set it at a word filter option, not under a porn category, if you set it at the highest, most strictest levels.

These filters—I mean, you have I-gear, which is semantic. You are using the entire New York City School District. You have got CyberPatrol, X-Stop, N2H2. These are filters that have been customized for library and school settings that don't block any of these sites.

So the filter technology can be told to do it, and if it makes a mistake of 1.5, the public doesn't have a right to receive that, at least not in a public library.

So the Courts should say if you find out that a site is wrongfully blocked, the filter will unblock it. The library will insist on it, and it will be done. So this bill really won't impact protected speech for more than minutes maybe if somebody really wanted to do it. But even if it did, you are not entitled to have the government buy you that which is protected speech.

Mr. PICKERING. The fundamental difference between, say, the Communications Decency Act, and CHIPA, is that, one, all legal terms addressed in CHIPA are well established; child pornography, obscenity, harmful to minors. There are no new definitions, and no new terms, and well established definitions, and legal terms, of what is not constitutionally protected speech.

On the difference between the least restrictive means and on the question of viewpoint discrimination, the difference is that this is a funding issue, just like we condition transportation funds on blood levels of alcohol, on driving, age, and seatbelts.

The logic, because it is not completely effective, brakes or seatbelts are not 100 percent effective, but this is a tool, a technology tool. And I do think that from a technological point of view that it is somewhat disingenuous to say that it is too big. There are too many sites with a search engine or with a filter technology. That is what the technology does.

It is well suited to be able to block that which is defined in this Act as child pornography or obscenity, and Ms. Caywood, on the third section of the bill, does require local community input. We are not imposing a one size fits all, a federally only approach.

We were very sensitive to that issue, and if you look at the third provision of the bill, that is the part of the process which includes the local community, your viewpoints, and views of parents and families in that community, in establishing community standards.

I think that this bill is very well structured. And, finally, Mr. Ophus, my last question on the effectiveness of technology. We have had some raised concerns about whether filter technologies are effective or not.

The Consumer Reports raised questions about that. Would you address the Consumer Reports and what they did in their study, and what they looked at, and why that is not a complete picture, and then where we are today on the effectiveness of filter technology.

Mr. OPHUS. Thank you. I appreciate the opportunity to say that, because now on several occasions I have heard comments made regarding things like just yesterday by Mr. Johnson, where chicken breast sites were blocked.

The fact of the matter is that Consumer Reports, and I cited this in my original oral testimony, stated that filtering is not effective. And actually Consumer Reports did something that I don't think I have ever seen them do before. They ran a spin-off article that sat right in an in-set to this report, stating this is why the government shouldn't impose these kinds of filters on our schools and libraries.

Well, that's why the rebuttal or the letter that cam back from the Consumer Reports—and actually I will be happy to read it again here to you—was so important, because he only tested six products.

Now, Mr. Johnson made a comment a minute ago about chicken breasts. The problem with his comment is what filter was it, and when did that happen, because without those pieces of information, it really is a completely non-valid point.

I know for a fact the technology that we use, S4F technology, has a provision in the key word element called intelligent key word search and block out, which is a nice big long acronym.

But basically what it means is that years ago, literally 2½ years ago, we solved the problem of keyword search filtering, where if you searched on sex, it would block, but not sexually transmitted diseases or Middlesex, England, or chicken breasts, but perhaps breasts.

So the technology has been around already for a couple of years to stop those types of key word filtering and it is literally the most consistent argument that I still hear coming from opponents of filtering, is this key word issue, when in fact it is not an issue whatsoever.

So in the response notice, real quickly, in the Consumer Reports, the Consumer Reports editor, David Hyde—and I am happy to give you a copy of the letter. I have it with me—basically said in his response that you are right. We are guilty of testing only so-called client side software.

The significance of that is that client side software is never typically used in the education or library space. It is typically a product that you would put on a home computer. There are, as Ms. Getgood mentioned, server side products, and ours is one of them, that we might call more industrial strength, more powerful.

And where the data bases are immediately up to date, and there is no downloading of data bases. So basically he said—actually the Consumer Reports that we did was specifically about products that existed in the retail or the consumer space.

We never did intend, nor do we intend in the future, to test any kind of products in the educational or school space. So using Consumer Reports as proof positive that educational filtering in libraries doesn't work is erroneous. It is a bogus argument without a doubt.

Mr. PICKERING. One final question. If there is a site that is erroneously blocked, whether it is the Markey site or whatever it might be, how long would that take to correct by a school or library?

Mr. OPHUS. It depends upon the system you are using. Again, there is different filters and every company that I know has a different set of features. There are some filters where the second the Administrator puts in the URL, and this sight was wrongly blocked, it immediately changes it in the master data base.

Mr. PICKERING. How long does that take?

Mr. OPHUS. Seconds. I mean, nanoseconds from the moment you hit the enter button, because the data base on server site products and proxy servers are real time.

As soon as that site is added to that list, it is now available to be used. Now, there are some products that they may want to e-mail a URL in, and then the human review, either committee or person, looks at it and says yes or no. So it could be 24 hours or it could be longer.

Mr. PICKERING. But a school or library could say, look, we want to have a very flexible quick process, and they could work it out where as soon as it is identified, it could be corrected.

Mr. OPHUS. With our particular technology, when the administrator puts in what is called an override, they can type in what is called pass through lists. We want this site to be allowed to be passed through. It immediately makes it available, and it also e-mails it to our review board for our permanent use with everybody else in the world.

Mr. PICKERING. And that would be probably more quicker and more efficient, and effective, than say a tap on the shoulder?

Mr. OPHUS. Well, the issue about the tap on the shoulder is this. If you have a librarian walking over and taping a shoulder, they are making a filter judgment at that point.

In essence, it is really no different than a filtering company who actually may have more stringent criterion making a value judgment. So there still is a valued judgment being passed in the tap on the shoulder issue.

Mr. PICKERING. Mr. Ophus, thank you very much. I appreciate what you and your company are doing. Mr. Chairman, thank you for this. I would like to ask for unanimous consent to have additional materials submitted to the record.

Mr. UPTON. Without objection.

[The information referred to follows:]

[Monday, April 2, 2001—USA Today]

STUDY: NET USERS CITE CHILD PORN AS TOP ONLINE THREAT

WASHINGTON (AP)—Americans think child pornography is the worst danger on the Internet, according to a survey released Monday.

They are divided over whether they mind federal agents spying on e-mail, according to the Pew Internet and American Life Project study.

"The Internet is not necessarily the boogeyman when it comes to how Americans feel about fighting crime," said Susannah Fox, author of the study.

"They're very concerned about online crime, but they don't see e-mail as particularly threatening or requiring more surveillance from law enforcement," Fox said.

Seventy percent of the respondents said they were anxious about computer viruses, with 80% worried about fraud and 82% concerned with terrorist activity online.

But the most respondents, 92%, said they were worried about child pornography, and half of the respondents rated child porn as the single most heinous online crime, far higher than any other choice.

"As soon as we asked the question, it was overwhelming how people reacted negatively to child pornography," Fox said. "It's something that may or may not touch the lives of every American, but everybody is horrified."

Concerns about criminal activity also outweighed Americans' fears about the government looking at e-mail.

While only 31% said they trust the government to do "the right thing" most of the time or all of the time, 54% of Americans approve of the FBI monitoring a suspect's e-mail.

Only about one in five Americans said they have heard of the FBI's controversial e-mail monitoring system, previously called "Carnivore" and now renamed "DCS 1000." Of those, 45% said it is a good law-enforcement tool, but an equal number said it was a threat to the privacy of ordinary citizens.

"Knowing about Carnivore doesn't seem to change people's minds very much," Fox said, adding that the respondents were more comfortable giving that power to the FBI rather than to generic "law enforcement agencies."

But while Americans don't mind the FBI checking e-mail, 62% of the respondents said they want new laws to protect their privacy.

The results were based on a telephone survey of 2,096 adults, of which 1,198 were Internet users, taken from Feb. 1 to March 1. There is a sampling error of plus or minus 2% for questions posed to the whole group, and plus or minus 3% for questions to the Internet users.

[February 11, 2000]

LIBRARIAN RESIGNS AFTER BEING ORDERED TO PROVIDE PORNOGRAPHY TO CHILDREN

Seattle, WA—After pursuing a rewarding career for over 10 years, a Seattle reference librarian has been forced to resign her position, after being ordered to provide public access to graphic internet pornography sites on library terminals. Not only was the librarian required to allow adults unchecked, unlimited, and unregulated access to these sites, but was also required to allow such access to children, as well. According to library policy, anyone, no matter what age, is allowed total library internet access to anything except illegal child pornography.

When she brought her concerns before the library board, the board decided to filter the internet terminals in the children's areas, but refused to restrict access by children and teens to the terminals in the adult sections of the library. Another area of concern was that high school student employees would be subjected to these pornographic sites when providing computer assistance to library patrons.

"Since the moment this librarian began expressing her concern for the children to the library board, she has been the subject of intimidation and ridicule," said Brad Dacus, President of Pacific Justice Institute. "There are other employees that feel similarly to this librarian, but are not able to deal with the intimidation that she has experienced. They have, consequently, been afraid to express their concerns and objections. No one should ever face the loss of their career in the effort to protect our children, and no staff should ever be forced to view pornographic material as part of the requirements of their job."

Pacific Justice Institute is a non-profit organization dedicated to the defense of religious freedom, parents, rights and other basic constitutional civil liberties.

[The Associated Press State & Local Wire—March 1, 2001]

STILWELL LIBRARY CLOSING STIRS CONTROVERSY

The closing of the Stilwell Public Library for several days stemmed from a misunderstanding, not controversy over Internet use, a library official said Thursday.

The library closed Feb. 22 and didn't reopen until Wednesday. A member of the Stilwell Library Advisory Board said allegations of patrons using the library's computers to access pornography was one reason for the closing. But Marilyn Hinshaw, the director of the Eastern Oklahoma District Library System, said Thursday she was unaware of any connection between the library's closing and Internet service.

"Most of the library patrons of Stilwell have embraced and benefited from the Internet access offered at the library," said Hinshaw, whose office governs the Stilwell library and 13 other libraries in northeastern Oklahoma.

Stilwell officials said Librarian Pat Gordon shut down the library when advisory board members tried to move around some equipment with the authority of the City Council. Hinshaw said a misunderstanding was to blame and was cleared up when city officials assured that moving furniture, files and computers would be discussed in greater detail before further action was taken.

Mayor Marilyn Hill-Russell said Gordon abruptly locked up the library while the chairman of the library board and two board members tried to move some equipment for the City Council in order to reopen a meeting room.

The city owns and maintains the building where the library is housed. The council passed a resolution more than three months ago to restore a storage-type room back to a meeting room, the mayor said. But Bob Perkins, a member of the Stilwell Library Advisory Board, said there also had been several complaints lodged with the board about patrons viewing child pornography on computers in the enclosed room.

"It's common knowledge around town that if you want to watch porn, then go to the public library in Stilwell, because you can hide," said Perkins, who thought the computers should be placed in the middle of the library.

Hinshaw said in a news release that the five computers with Internet access resulted from a Gates Foundation grant. They were housed in a converted staff office "and staff are in and out on a regular basis, using the fax machine which also is located there"

"It's not the ideal way to accommodate this need, it is just the least expensive," she said. "As you would expect, competition for space in the 3,200 square foot building makes for anything but easy answers."

The library reopened Wednesday. "I'm glad to say we're back," Gordon said Thursday, "and it's business as usual."

[Newsweek, July 17, 2000]

CYBERSEX

NOT ON THE READING LIST

THANKS TO INTERNET ACCESS, LIBRARIANS HAVE A NEW JOB: KEEPING THEIR PATRONS FROM TUNING INTO PORN

By Sarah Downey

Librarian Wendy Adamson likes to keep up readers' interests. She knows who likes a good mystery novel and who prefers the latest romance yarn. But she draws the line at helping patrons indulge their sexual curiosity on the Internet. "One guy was really into bondage. A lot of them had a thing for torture scenes" says Adamson, who saw the images on monitors after the Minneapolis Public Library connected to the Net in 1996. Several dozen people got in the habit of surfing for cyberporn at the main library, Adamson says sometimes for eight straight hours.

The Internet revolution has changed the local library. Circulation is up, budgets are up and, with more high-tech resources, the role of librarian now includes thwarting sex acts on the premises. One of Adamson's colleagues stumbled on three teenagers, apparently heated up by what they'd been watching on the computer, having group sex in the bathroom. Circulation supervisors in a library in Austin, Texas, witnessed an adult patron telling children how to access Internet porn. "They were being exposed to things they'd really rather not see," says assistant library director Cynthia Kidd.

Librarians tend to support the First Amendment, so the idea of restricting Internet access doesn't come easily. But with porn seekers continuing to increase, 15 percent of the nation's 9,000 public-library systems (Austin's included) now use filters. The software has flaws; the American Library Association says it arbitrarily suppresses access to otherwise harmless material.

Still, censorship debates become irrelevant when sites violate obscenity and child-pornography laws. In May a lawyer for Adamson and 11 of her colleagues filed a sex-discrimination claim against the library with the federal Equal Employment Opportunity Commission, charging that access to Internet sex sites created "an indisputably hostile, offensive and palpably unlawful working environment." Pressure from anti-porn taxpayers finally led library director Mary Lawson to ban the viewing of "sexually offensive" material. Undercover cops now patrol the computer terminals.

Other cities have tried different remedies. After a convicted child molester's 1999 arrest for distributing child porn from a computer at the L.A. Public Library, officials opted for no-sex search engines on some computers. Denver took similar action, says library director Linda Cumming. Beyond that, though, "the librarians need to understand it's just a condition of the job today," Cumming says. She tells her staff sympathetically, "I'm sure this isn't what you expected when you went to library school."

[USA Today—May 8, 2000]

PORN MAKES WORKPLACE HOSTILE, 7 LIBRARIANS SAY

The news behind the Net by Janet Komblum

Seven Minneapolis librarians filed a discrimination complaint with the Equal Employment Opportunity Commission, saying that library patrons viewing pornography on the Net have helped create an "intimidating, hostile and offensive working environment."

Specifically, they are complaining about the library's policy of allowing unrestricted access to the Net, saying they and patrons are constantly subjected to offensive and inescapable images on screen and off, their attorney says.

In a letter to the library board president and director, attorney Robert Halagan says librarians "should not have to choose between their jobs and working in a hostile, sexually perverse and dangerous workplace."

But Judith Krug of the American Library Association, an organization that opposes filtering, says librarians do have an alternative: making library computers more private. Filters, she says, weed out "valuable, important information that's constitutionally protected."

Halagan says privacy screens are inadequate: They only block from an angle. The city, he adds, must "Provide an environment that is not hostile and offensive. They're going to have to make some choices."

[The Wall Street Journal—January 14, 2000]

TASTE—REVIEW & OUTLOOK: X-RATED

While Tallie Grubenhoff stood at the checkout counter of the Selah, Wash. (pop. 5,000), library with her toddler daughter, she noticed a rowdy group of preteens around a computer. Her other kids drifted over to see what all the fuss was about. The six-year-old came back with the answer: They'd been watching "a lady bending over with something in her mouth going up and down and she was a naked lady."

But the worst was yet to come. The librarian informed Mrs. Grubenhoff that she was powerless to prevent children from accessing Internet porn because the word from her boss was that doing so would violate their free-speech rights. And that informing their parents, she added, would violate their privacy rights.

Welcome to the American library, where Marian the Librarian is fast making room for the Happy Hooker.

Mrs. Grubenhoff isn't the only one with a horror tale; most American parents are understandably disturbed by the terrors that lurk on the freewheeling Internet for their children. And their fears have reached the politicians; in at least two presidential debates, Sen. John McCain came out for the mandatory installation of blocking software in libraries. All the more reason to wonder why, as the American Library Association's midwinter conference begins today, the subject hasn't even made it onto the group's agenda.

"We think filters is a simplistic approach," ALA President Sarah Ann Long told us. Indeed, the most the ALA will do this weekend is to issue a lowly fact sheet that states that "the American Library Association has never endorsed the viewing of pornography by children or adults."

Problem is, it's never endorsed their not viewing it, either. Quite the opposite. Virtually all the ALA's energies appear directed toward a highly politicized under-

standing of speech. As one ALA statement puts it, libraries "must support access to information on all subjects that serve the needs or interests of each user, regardless of the user's age or the content of the material." One gets the sense that the activists at the ALA consider Larry Flynt less of a threat than Dr. Laura, who's complained about ALA opposition to efforts to ensure that minors are protected from pornographic Web sites on library computers.

Maybe blocking software is not the solution. We do know, however, that there are answers for those interested in finding them, answers that are technologically possible, constitutionally sound and eminently sane. After all, when it comes to print, librarians have no problem discriminating against Hustler in favor of House & Garden. Indeed, to dramatize the ALA's inconsistency regarding adult content in print and online, blocking software advocate David Burt three years ago announced "The Hustler Challenge"—a standing offer to pay for a year's subscription to Hustler for any library that wanted one. Needless to say, there haven't been any takers.

Our guess is that this is precisely what Leonard Kniffel, the editor of the ALA journal American Libraries, was getting at last fall when he asked in an editorial: "What is preventing this Association . . . from coming out with a public statement denouncing children's access to pornography and offering 700+ ways to fight it?"

Good question. And we'll learn this weekend whether the ALA hierarchy believes it worthy of an answer.

[The Wall Street Journal, Thursday, February 3, 2000]

LETTERS TO THE EDITOR

PORN SURFERS INVADE THE LIBRARY

Your Jan. 14 editorial "X-Rated" (Taste page, Weekend Journal), contrary to ALA Council member Maurice J. Freedman's defensive claims (Jan. 20, Letters) was right on the mark. However, Mr. Freedman is accurate in stating that "libraries have policies to manage Internet use." The problem is those policies seldom include real protection for either the employees or the patrons, except the patrons accessing pornography.

Most of the porn surfers get total "privacy" and "freedom to view" in the majority of libraries with Internet access. Rather than anti-porn rules, ALA "leadership" prefers to recommend "privacy screens" creating instant peep-booths at taxpayer expense and making it harder for librarians to monitor the behavior until and occasional behavior signals a problem even "free access" fans can't ignore. Otherwise librarians are frequently told to leave the patrons completely alone, regardless of their web activities. More often than not, children can access "adult" sites on the Internet or view adults' lewd Internet surfing without parental knowledge or permission.

In the occasional cases of more stringent rules for some unfiltered systems, librarians may give polite verbal warnings or, at best, temporary dismissal from Internet use. In those latter cases, the working librarians (usually female) are forced to view the obscenity and enforce the rule with the porn viewer (usually male) who is not inclined to comply without argument. That sexually harassing or hostile job environment is illegal in every other government workplace. Even when the material accessed is child pornography, most libraries' "acceptable use" policies do not instruct librarians to stop it or report to the local police as the law would seem to require.

ALA "leadership" is also responsible for:

- Cooperating with the ACLU and pornographers, like Hugh Hefner, by rewarding libraries where community efforts to get porn-filtering are thwarted such as Loudoun County, Va. There the so-called "local" anti-filter group was directly aided in its set-up by the ALA itself.
- Refusing to support moderation of the current recommended online standards of access to everything "regardless of content or age of user." At the October '98 preliminary meeting for the President's Online Summit regarding children's safety issues, Judith Krug, longtime ALA-OIF spokesperson, refused to endorse public library rules against accessing Internet obscenity and child pornography, two categories already outside of Constitutional protection. At the recent midwinter ALA conference the only new agreement was a "task force to study the issue" of age and access.
- Cooperating with the ACLU and pornographers by threatening libraries who do filter with expensive lawsuits and by intimidating librarians who would otherwise speak out despite the fact that no circuit court has ever made a precedent-setting decision declaring filters unconstitutional.

- Encouraging public libraries from coast to coast to stall against or refuse cooperation with public research into their Internet pornography incidents. A growing number of systems are refusing to even keep such record so there is nothing to report.

The only public voice of reason that has surfaced in recent months from within the ALA hierarchy is Leonard Kniffel's. His gutsy October '99 editorial in the American Libraries magazine dared to.say "children and pornography don't mix" and even more bravely asked, "What is preventing this Association . . . from coming out with a public statement denouncing children's access to pornography and offering 700+ ways to fight it?"

KAREN JO GOUNAUD, *President*
Family Friendly Libraries, Springfield, Va.

Mr. UPTON. Mr. Largent.

Mr. LARGENT. Thank you, Mr. Chairman. I have just a few questions. Mr. Johnson, I am reading here from American Civil Liberties Union Policy Number 4, Censorship of Obscenity, Pornography, and Indecency, that your organization put out.

In there it states that much expression may offend the sensibilities of people, and indeed have a harmful impact on some. But this is no reason to sacrifice the First Amendment. The First Amendment does not allow suppression of speech because of the potential harm. Do you agree with that statement?

Mr. JOHNSON. Well, yes, we do because of the fact that there isn't a principal basis for making some of these distinctions that you are talking about with regard to the First Amendment, when it says that Congress shall make no law abiding freedom of speech. That is hardly ambiguous.

Mr. LARGENT. Sir, would you say that the Supreme Court's decision on—the decision to say that to stand up in a crowded theater and yell fire, that that would be constitutionally protected speech?

Mr. JOHNSON. Well, first of all, that wasn't a decision that said that you couldn't do that. That was an example in dicta that was being used.

Mr. LARGENT. So you disagree with that as an example? I mean, people should be able to do that?

Mr. JOHNSON. Well, that wasn't what I said. What I said was that your characterization of the Supreme Court opinion as such was not correct.

Mr. LARGENT. Okay.

Mr. JOHNSON. But what I am saying is that when you take a look at what the Court has done with regard to, for instance, Brandenburg versus Ohio, when you talk about the imminence of danger, that is what the yelling—or as Abbie Hoffman said, yelling theater in a crowded fire.

Basically that is what it was regarding, and I don't have a problem when you are talking about the imminent danger of speech being curtailed to some extent. But when there isn't that imminent danger, then yes there is a problem with saying that speech should be curtailed simply because of its effect on the person who hears that.

I mean, after all, any good information is going to have an effect on the listener, and it may not be the effect that you want. But nonetheless if you start saying that because it may have a bad effect on somebody, then we are going to curtail that speech, you now give the government power to curtail all speech, because any good orator may end up affecting somebody.

But if it is not the effect that the government wants, the government will now have the ability to limit that speech.

Mr. LARGENT. So in reality what we are arguing over here is just degrees of the limits that the government can place upon free speech, because you just said you are not necessarily opposed to someone standing up in a crowded theater and yelling fire, that should not be protected free speech?

Mr. JOHNSON. Well, assuming that here is no fire. I mean, obviously if there was a fire, then that's different. But what I am saying is that if there is an imminent danger, and what I am talking about is an imminent danger, and not just——

Mr. LARGENT. That's exactly what I said you said. So again what we are talking about then is the degree to which we limit free speech, because what you just said should be allowable is a degree of limitation on free speech. Would you agree with that?

Mr. JOHNSON. Well, only to the extent that it encourages action.

Mr. LARGENT. All I am saying is do you agree that what you just said is a limitation on just total free speech?

Mr. JOHNSON. Well, I would agree that it is a limitation of action, where you have speech coupled with imminent action.

Mr. LARGENT. That's a great lawyer answer for saying exactly what I just said. So again we are just talking about—your degree of limitation is this much; whereas, maybe some people, including the ACLU, I'm sure, would feel like the degree of limitation is this much on pornography, and obscenity, and access to it by our children, right?

So we are just talking about degrees, but we have already crossed the rubicon of saying that there are some limitations that we can all agree upon should be placed on the First Amendment, and so it is just degrees.

And basically when you get back to that argument, then it becomes or it goes back to the community values, community standards, that the Supreme Court did talk about in terms of defining obscenity, right? I mean, we are just talking about degrees here.

Some communities have a great tolerance, and Chicago obviously has more tolerance than I think they should have. They wouldn't have that same level of tolerance in Tulsa, but that they have a greater degree of tolerance or the community standard, and their degree is a lot higher of what they will tolerate as free speech.

And in Tulsa, Oklahoma, it is a lot lower hurdle, but again we have already crossed the argument. I mean, you have, as representing the ACLU here, you said there should some limitations, and you want to lawyer it all that you want.

But you said there should be some limitations on free speech. I agree with that.

Mr. JOHNSON. And so we agree on something, I suppose, from that standpoint. But again what you are talking about, in terms of limitations, the Court has been very clear that these so-called degrees have to be very carefully evaluated. And you don't just say, well, it is just a matter of degree. So we are going to start limiting speech.

Mr. LARGENT. Would you say that not allowing somebody to stand up in the theater and yell fire is a suppression of speech because of potential harm?

Mr. JOHNSON. No, I would not characterize it that way.

Mr. LARGENT. Oh, my gosh. This is unbelievable. Okay. How would you characterize it?

Mr. JOHNSON. Well, what you are doing is you are saying that because there may be harm, okay?

Mr. LARGENT. Potential harm.

Mr. JOHNSON. Potential harm, and——

Mr. LARGENT. Isn't that why we say you shouldn't stand up in a crowded theater and yell fire when there is no fire?

Mr. JOHNSON. No, not when you look at Brandenburg versus Ohio.

Mr. LARGENT. Then why should you not yell fire in a crowded theater when there is no fire? Why should you not do that if it is not because of the potential harm?

Mr. JOHNSON. It is because of the imminent harm, and not potential harm. There is a difference between imminent and potential.

Mr. LARGENT. What is the difference?

Mr. JOHNSON. The difference is potential may be somewhere down the road, and what you are talking about in Brandenburg versus Ohio is an imminent harm. In other words, that something is going to happen right now, and when you yell fire in a crowded theater where there is no fire, then what you are doing is immediately causing problems because of the stampede effect.

But what you are talking about is some potential harm down the road because of the effect of that particular speech. That is not what the First Amendment allows in terms of curtailing speech, because if you do that, then you give the government carte blanche essentially to restrict any speech, because it may have an effect somewhere down the road.

And that is the distinction between potential harm versus imminent harm. And like you said, Brandenburg versus Ohio talks about the imminence and not the potential.

Mr. LARGENT. Okay. Mr. Chairman, those are all the questions that I have.

Mr. PICKERING. Mr. Chairman, I have just one follow-up question on that. Would you say that child pornography, the production and distribution of child pornography, and then the viewing of child pornography in public places like a library or school to minors, would that be imminent harm?

Mr. JOHNSON. No, it would not.

Mr. PICKERING. Okay. Thank you.

Mr. UPTON. Well, that concludes the hearing. I appreciate your time this morning. I have to say that there is going to be a lot of interest as all of us watch how the FCC is going to implement CHIPA, and how the courts are going to rule as we attempt to protect our kids in the digital age.

I would note listening to the discussion that there are many Americans and again many Members of Congress that indeed view taxpayer funded pornography that is accessible at public libraries as a real problem in this day and age.

It does seem as though we have the technology at our fingertips that has come a long way from the days of old, and I salute that work and obviously we will watch very carefully in the coming days

and weeks ahead. Thank you very much. This hearing is adjourned.

[Whereupon, at 12:58 p.m., the subcommittee adjourned.]

[Additional material submitted for the record follows:]

AMERICAN CIVIL LIBERTIES UNION
WASHINGTON NATIONAL OFFICE
April 5, 2001

The Honorable FRED UPTON
2333 Rayburn House Office Building
Washington, DC 20515-2206

Re: Hearing on CHIPA before the Subcommittee on Telecommunications and the Internet, April 4, 2001

DEAR CONGRESSMAN UPTON: Attached is a letter to Congressman Edward Markey regarding the hearing yesterday before your Committee. I respectfully request that the letter be made a part of the record.

If you have any questions, please call me at 202-675-2334.

Sincerely

MARVIN J. JOHNSON

AMERICAN CIVIL LIBERTIES UNION
WASHINGTON NATIONAL OFFICE
April 5, 2001

The Honorable EDWARD J. MARKEY
2108 Rayburn House Office Building
Washington, DC 20515-2107

Re: Hearing on CHIPA before the Subcommittee on Telecommunications and the Internet, April 4, 2001

DEAR CONGRESSMAN MARKEY: During your comments yesterday during the hearing, you seemed to imply that the regulation of Internet content imposed by CHIPA was justified because of the government's limited ability to regulate broadcast media. That contention was soundly rejected by the United States Supreme Court in *Reno v. ACLU* (1997). The Court refused to analogize the Internet to the broadcast media, instead, saying it was more analogous to the print media. Thus, the Internet is entitled to the highest protection under the First Amendment, similar to books, newspapers, and magazines.

If you have any questions, please call me at 202-675-2334.

Sincerely,

MARVIN J. JOHNSON