

**Censorship in the Library:  
The Children's Internet Protection Act**

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The Children's Internet Protection Act, also known as CIPA, is a federal law enacted by Congress in December 2000. It addresses Internet access in schools and libraries which receive discounts for Internet access or for connections from federal sources such as the E-rate program, the Library Services and Technology Act (LSTA) funds through the Institute of Museum and Library Services (IMLS).

In order to retain funding, schools and libraries must put in place measures to block or filter pictures on the Internet that are obscene, contain child pornography, or when computers are used by minors, are harmful to minors. They must also adopt a policy to monitor online activities of minors which does include site tracking.

This policy should also address access by minors to inappropriate matter on the Internet; the safety and security of minors when using email, chat rooms and other forms of direct electronic communication; unauthorized access including 'hacking' and other unlawful activities by minors online; unauthorized disclosure, use, and dissemination of personal information regarding minors; and restrict minors' access to materials harmful to them. [FCC]

Implementing filters on Internet use in libraries is a slippery slope leading to the possibility of further censorship. Librarians, as supported by the American Library Association, hold true to the First Amendment in the freedom of speech and the right to free access to information. Internet filtering restricts this free access to information and therefore contradicts the concept of libraries being free places of access to information.

“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.”[Caywood]

## **Federal Funding**

There are two main sources of federal funding for schools and libraries in order to gain access to discounts for Internet access. They are E-Rate and state grants through the Library Services and Technology Act (LSTA), as part of the Institute of Museum and Library Services (IMLS).

E-Rate is administered through the Federal Communications Commission. It requires Internet service providers to give discounts to libraries. This was worth \$58.5 million to libraries in the fiscal year ending June 2002. [Lane]

Through the Library Services and Technology Act, the Institute of Museum and Library Services provides funds to State Library Agencies using a formula based on population. The State Agency may then distribute these funds to other libraries in their state. There are two priorities for the funding. The first is for technology used for information sharing between libraries. The second is to make library resources more accessible to urban, rural or low-income residents or those who have difficulty gaining access to library services. ["Grants to State Library Agencies"] These grants totaled more than \$149 million in fiscal year 2002. [Lane]

## **Pornography vs. Obscenity**

Until the advent of the Internet libraries had full control of the acquisition of materials. Most libraries do not purchase materials which might be considered obscene. The Internet provides new territory for libraries in that there is no control over what it does or does not provide to its patrons which led to the introduction of the Children's Internet Protection Act.

“We all went to library school, took the course in censorship, were prepared to fight to the death to keep Judy Blume or Robert Mapplethorpe in our collections. But we were not prepared for this.” [Adamson]

The question over obscenity vs. pornography lies at the heart of the debate.

“In *Miller v. California* (1973), the court ruled that material could be banned as obscene if it met a three-part test:

- The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest (Roth Test);
- The work depicts, in a patently offensive way, sexual conduct specifically defined by the applicable state law;
- The work, taken as a whole, lacks serious literary, artistic, political or scientific value (LAPS Test).”  
[Senat]

As expressed in CIPA, libraries seeking to control the use of Internet access should implement a clearly stated Internet access policy. This should include statements of what are appropriate and inappropriate uses of the Internet within the library. A plainly written definition of obscenity vs. pornography, in that obscenity is generally considered illegal acts of a sexual or scatological nature, should be part of this policy.

## **Supporters**

There are two main organizations that filed Amicus briefs to the Supreme Court in support upholding CIPA in the *United States v. American Library Association* case. They are the Concerned Women for America and the American Center for Law and Justice. Both represent right wing factions holding separate interests.

The Concerned Women for America (CWA) is a Christian women’s organization established in 1979 by Beverly LaHaye in response to an interview she viewed of Betty Friedan on television. In this interview, Friedan claimed to speak for all women in America. LaHaye created CWA as a voice for women who did not agree with the

Friedan's feminist viewpoint. They actively work to promote or fight against public policy that lies within their interest.

CWA filed a five point brief in support of CIPA as part of the Supreme Court case. Their main statement was that filter technology is an effective solution to protecting library patrons from sexually explicit materials on the Internet. They also contended that funding conditions do not remove nor criminalize any form of speech or materials, whether they are illegal or not. ["CWA Files Amicus Brief Supporting CIPA"]

The American Center for Law and Justice (ACLJ) was founded by Pat Robertson in 1990. Their mission is to defend Judeo-Christian values and to educate the public on First Amendment and religious freedom issues. They have a strong focus on pro-family and pro-life concerns.

In their brief, ACLJ urged the Supreme Court to uphold the constitutionality of CIPA. They represented their organization as well as the interests of nine members of Congress. ["ACLJ..."]

## **Opposition**

Opposing the implementation of filters in public schools and libraries receiving federal funding were two main organizations. They are the American Library Association (ALA) and the American Civil Liberties Union (ACLU). Both have a long history of defending citizens rights in regards to the First Amendment.

The American Library Association was founded in 1876 with the purpose of elevating public literary tastes. Through successive generations their mission transitioned to advocating the freedom to read. The ALA represents any person, library or other organization interested in library service and librarianship.

ALA's stance is that it believes that CIPA is unworkable and unconstitutional in that it limits public access to information via the Internet. They purport that no technology currently exists that filters out illegal materials, such as obscenity and child pornography, which also allows patrons full access to constitutionally protected speech. ["Letter Explaining ALA's Position on School Libraries."]

The American Civil Liberties Union was founded in 1920 in response to many civil liberties issues in play during the period. Their mission is to fight civil liberties violations no matter when or where they occur. They are also active in state and federal government in fighting to ensure that the Bill of Rights is upheld within their view.

Leading the ACLU argument is the point that CIPA violates the First Amendment as it prevents citizens from access to constitutionally protected speech. They also contend that current technology provides erratic web site blocking. On top of this, the ACLU states that web blocking is contrary to the mission of public libraries, which are in the business of helping people find the information they need, no matter if the form is available in print or electronically. The final point of their argument is that CIPA will widen the digital divide in limited open access to citizens who cannot afford access on their own. ["Blocking Programs on Trial"]

“Of the 143 Million Americans who use the Internet regularly, 10 percent rely on access at a public library. Some 95 percent of all U.S. libraries offer Internet access, and federal aid has been a crucial factor in this expansion.”  
[Lane]

## **Supreme Court Decision**

In the 6-3 Supreme Court decision of *United States v. American Library Association* issued on June 23, 2003, Justices Rehnquist, O'Connor, Scalia and Thomas

formed a plurality of opinion. Their decision rested on the principle that “Congress has wide latitude to attach conditions to the receipt of federal assistance in order to further its policy objectives.” Justice Kennedy concurred that... “given the ability of users to request unblocking, there is little to this case.” [Hilden]

Justice Breyer concurred that “the statutory provisions at issue in *United States v. American Library Association, Inc.* would survive this medium level of scrutiny for several reasons. First, ... they allow unblocking. Second, there were apparently no superior filters available that were free from overblocking and underblocking problems that plagued the filters the libraries used.” [Hilden]

Justice Stevens wrote a dissenting opinion, as did Justice Souter joined by Justice Ginsberg. “There is no good reason... to treat blocking of adult enquiry as anything different from what censorship it presumptively is,” wrote Souter. [Lane]

This decision was a departure for the currently sitting Supreme Court. They have historically taken a more expansive view of the First Amendment. This is exemplified by two previous reviews of attempts by Congress to regulate sexually explicit materials on the Internet. The court struck down the first and put forth a mixed ruling on the second. [Lane]

CIPA represents the third time since 1996 that Congress has responded to concerns of children being exposed to pornography through publicly available Internet access. The Communications Decency Act (CDA) was struck down in 1996. Congress passed a revised version in 1998 called the Child Online Protection Act (COPA). In 2002, the court partially upheld COPA but asked courts to review key provisions. Enforcement currently remains blocked. [Lane]

## Filters

Many questions arise for a library that is choosing whether or not to apply filters to their publicly accessible computers with Internet access:

- “Can effective policies be written to deal with obscene material and child pornography on Internet terminals in libraries?
- Do members of the public have the right to come into a public library and not see such materials openly displayed on terminals?
- Should each community decide on what standards it wants enforced in its own library?
- Can and should obscenity laws which are on the books in various states be enforced in libraries?
- Should we have separate viewing areas where people can look at sexually explicitly materials away from the general traffic in a library?
- Are filters sometimes useful, appropriate, helpful, at least on some terminals in the library?” [Adamson]

Filters currently available on the market tend to over block or under block sensitive materials as illustrated in **Appendix B: A Sample of Internet Sites Blocked by Filters**. They are not yet technically advanced enough to block only obscene and/or pornographic materials.

“A recent study by the Henry J. Kaiser Family Foundation in partnership with researchers at the University of Michigan, found that, when set at the least restrictive level, filters correctly block 87 percent of pornography while incorrectly blocking an average of only 1.4 percent of sites with legitimate health information.” [Lane]

Per CIPA, libraries can remove filters if a user requests them to do so. Users do not need to justify their request. This still calls into question privacy rights of users, or merely the embarrassment to the user of requesting that filters be removed.

## **Internet Access Policy**

Regardless of whether a library chooses to implement filters on their public Internet access terminals, a clear policy should be put in place covering what is and is not authorized to view. Within this policy should be statements of how incidences will be handled when they are encountered. Examples may include asking the patron to stop viewing obscene materials, requesting the patron to leave the computer they are using, or even to leave the library if it is a repeated incidence.

It is extremely important that the library administration is willing to back up the Internet access policy and support the library staff in implementing it. Communication on all levels is crucial to creating and maintaining a clear policy. From this aspect, it would also aid in implementation for the library to have their policy clearly posted near all Internet terminals.

Another aid in limiting the viewing of obscene materials might be a time limit on each of the terminals. In the case of the Minneapolis Public Library, outlined below, where a core group of patrons were using the public terminals to view obscene materials all of the hours the library was open, a time limit may have curbed some of this behavior. Finally it is important that parents monitor their children's behavior while on the Internet. Parents should not expect librarians or library staff to monitor their children's Internet use while in the library. Even if libraries have installed filters, parents should not have a false sense of security, as there is still information of a pornographic or obscene nature which might not be filtered out.

“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 their roadside, until they are mature enough and trusted enough to cross on their own.” [Caywood]

Filters are not technologically advanced enough at this juncture to filter out only pornographic or obscene materials while still letting in health, artistic or other information which may contain buzz words which the filters latch onto.

### **Minneapolis Public Library: A Case Study**

As illustrated in **Appendix A: A Short History of Libraries and Censorship**, there have been a string of court cases leading up to the Children’s Internet Protection Act. The majority have been struck down due to their violation of First Amendment rights, with CIPA being the exclusion. What often isn’t discussed is how uncontrolled Internet access may lead to a hostile work environment.

In May of 2000, twelve staff members of the Minneapolis Public Library filed a complaint with the EEOC claiming sexual harassment due to being exposed to patrons viewing pornography on publicly accessible Internet access terminals.

“We were totally unprepared for reality. Our naïve expectation was that people would use the Internet to study history, learn about medical conditions, track stock quotes, do research for college papers, and read their hometown newspapers. ...Not only did patrons view and display sexual activities, but they often sought attention of the staff, in order to heighten their enjoyment.” [Adamson]

The staff at the libraries was regularly assaulted by both pornographic and obscene images while walking past the public access terminals or gathering left pages on printers. A core group of users began frequenting the library solely for the purpose of

viewing sexually explicit material and became belligerent when approached by staff or security requesting them to stop.

“We wondered if the very nature of our profession denied us the civil rights afforded to all other Americans in the workplace. Did our status as librarians deprive us of protection from sexually explicit images as we worked day by day in our jobs?” [Adamson]

Within 24 hours of the EEOC filing, the Minneapolis Public Library created and posted a temporary Internet access policy which hadn't existed to date. It stated that it was illegal to send, receive, transmit or display materials considered obscene as defined by Minnesota state statute. A more substantial permanent policy was re-written and made explicit to the staff and patrons of the library in January of 2001.

A key change in the Minneapolis Public library was the establishment of responsibilities and reporting paths when staff encountered violations of the Internet access policy. Security guards were given authority to monitor patron use of the Internet and enforce the plan. Less than a week after the implementation of the new policy, many of the core group of patrons who were regularly viewing explicitly sexual images on the Internet left the library. [Adamson]

A sample of the library's Internet access policy is as follows:

“The Library upholds and affirms the right of every individual to have access to constitutionally protected material on the Internet. The content of the Internet is not managed or governed by any entity, therefore users may encounter materials they consider offensive. ... Parents and guardians are responsible for monitoring Internet access by children.” [“Internet Policy and Internet Use Guidelines”]

To date, the Minneapolis Public Library has not put filters in their publicly accessible Internet access terminals. Through the implementation of an openly stated

access policy, and the clear cut communication of roles and responsibilities when faced with violations, they have managed to create an open information environment that does not harass staff or fellow patrons.

## **Conclusion**

As *United States v. American Library Association* was decided in favor of the plaintiff, libraries receiving federal funding must comply in order to retain their financial support. The result of this is the implementation of filters on publicly accessible terminals providing Internet access. The choice of filter is up to the library and patrons may request for the filter to be turned off without giving a reason.

Filters, in their current state, do not provide a fool proof method for screening out only materials not protected by the Constitution. Due to this fact, as well as following the guidelines outlined by CIPA, libraries should create and communicate an Internet access policy. As can be learned from the Minneapolis Public Library case, this policy should be done in cooperation with the staff and be readily enforced by the administration.

The most important factor in protecting First Amendment rights is education within libraries between administration and staff as well as with the community of library patrons.

“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 patrons choices about using filters or not. ...

“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 technology for solutions.” [Caywood]

Through these measures, hopefully, libraries will be able to stave off the slippery slope that CIPA has begun.

## Appendix A: A Short History of Libraries and Censorship

[Jost, p. 475] with additional annotations where noted

- 1876:** The American Library Association (ALA) is founded.  
ALA leaders urge librarians to elevate public literary tastes.
- 1901-1950:** ALA transitions to advocating ‘freedom to read’.
- 1939:** ALA adopts Library Bill of Rights amid censorship battles over The Grapes of Wrath.
- “The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.
- Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.
  - Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.
  - Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.
  - Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.”  
[“Library Bill of Rights”]
- 1940:** ALA establishes the Committee on Intellectual Freedom.
- 1948:** The Library Bill of Rights is amended to call for active steps in opposing censorship and gather support of other groups.
- 1951:** ALA amends the Library Bill of Rights to cover films and other non-print materials.
- 1961:** ALA backs the integration of public libraries and also files a friend of the court brief defending a bookseller in the Tropic of Cancer case.
- 1967:** ALA creates the Office of Intellectual Freedom and amends the Library Bill of Rights to guarantee access without regard to age.

**1969:** The Freedom to Read Foundation (www.ftrf.org) is established as the ALA's litigation arm.

"The Freedom to Read Foundation[ 's]... charter lists four purposes:

- Promoting and protecting the freedom of speech and of the press;
- Protecting the public's right of access to information and materials stored in the nation's libraries;
- Safeguarding libraries' right to disseminate all materials contained in their collections; and
- Supporting libraries and librarians in their defense of First Amendment rights by supplying them with legal counsel or the means to secure it.

The Foundation is devoted to the principle that the solution to offensive speech is more speech, and the suppression of speech on the grounds that it gives offense to some infringes on the rights of all to a free, open and robust marketplace of ideas." ["About the Freedom to Read Foundation"]

**1996:** The Communications Decency Act makes it a crime to transmit 'indecent' on the Internet to people under the age of 18.

"The CDA ... makes it a felony to knowingly send or show 'indecent' material to a minor over the [Inter]Net." [Macavinta]

**1997:** The U.S. Supreme Court unanimously strikes down the Communications Decency Act.

**1998:** The Child Online Protection Act (COPA) criminalizes commercial transmission of materials considered harmful to minors. The federal courts block the law from going into effect.

A federal judge in Virginia bars filtering in the Loudoun County case and the ruling is not appealed.

"Relying on *Reno v. American Civil Liberties Union*, in which the U.S. Supreme Court struck down the Communications Decency Act, [Judge] Brinkema rejected arguments that the installation of such filtering devices constitutes 'a library acquisition decision, to which the First Amendment does not apply.' She pointed out that, since the library had originally provided uncensored Internet access and had then taken specific actions (and incurred additional expenses) to limit it, the situation was analogous to the removal of library materials. The result, she said, was similar to 'a collection of encyclopedias from which defendants have laboriously redacted portions deemed unfit for library patrons.'" [Dority]

**2000:** Children’s Internet Protection Act (CIPA), requiring federally subsidized public or school libraries to use filtering software to prevent children from accessing Internet pornography.

**2001:** The American Library Association (ALA) and American Civil Liberties Union (ACLU) challenge CIPA in federal court on behalf of libraries, library patrons and organizations with web sites.

**2002:** The Supreme Court partially upheld COPA but asked courts to review key provisions. Enforcement currently remains blocked.

**2003:** U.S. Supreme Court upholds CIPA in a 6-3 decision.

Minneapolis Public Library settles with twelve female librarians who brought suit due to being exposed to pornography from patrons viewing it on publicly accessible Internet terminals in the library.

The library settled the case on August 15, 2003 and paid each of the twelve librarians \$435,000. They are considering restricting patrons’ access to Internet porn. [“Library Settles...”]

“As part of the operating changes, library officials will consider Internet filters to screen out certain materials, changes in the printing of Internet material to reduce exposure to explicit material, more sanctions for those who violate library Internet policy, and consultation with staff on the placement of terminals.” [“Library Settles...”]

## **Appendix B: A Sample of Internet Sites Blocked by Filters**

From the Edelman Expert Report for

*Multnomah County Public Library et al., vs. United States of America, et al.* [Edelman]

1. **Stop Home Health Care Medical Supplies Main Menu**

<http://www.1sn.com/homehealthcare>

Blocked by: Cyberpatrol (Adult/Sexually Explicit)

2. **A1 Frontpage Web Hosting - Frontpage Web Hosting and Website**

<http://www.a1-frontpage-hosts.net>

Blocked by: N2H2 (Pornography)

3. **Rewind Classic Rock Band**

<http://www.aardvarks.com/rewind>

Blocked by: N2H2 (Adults Only, Pornography), Smartfilter (Sex), Cyberpatrol (Adult/Sexually Explicit), Websense (Sex)

4. **American Association of Sex Educators, Counselors, and**

<http://www.aasect.org>

Blocked by: Smartfilter (Mature)

5. **Aberdeen Independent**

<http://www.aberdeen-indy.co.uk>

Blocked by: N2H2 (Adults Only, Pornography)

6. **Asian Community AIDS Services**

<http://www.acas.org>

Blocked by: N2H2 (Sex)

7. **Custom Designed Swim Suits and Distinctive Aerobic Wear**

<http://www.actionfit.com>

Blocked by: Smartfilter (Sex), Websense (Adult Content)

8. **Adam Butler Gallery of Photography and Contemporary Art**

<http://www.adambutler.com>

Blocked by: Websense (Nudity)

9. **Adbusters Culture Jammers Headquarters**

<http://www.adbusters.org>

Blocked by: N2H2 (Nudity)

10. **Center for Adult Development**

<http://www.adultdev.org>

Blocked by: N2H2 (Adults Only)

11. **Advanced Art of Cosmetic Surgery: Thomas M. DeWire, Sr., MD**

<http://www.advanced-art.com>

Blocked by: Smartfilter (Nudity)

**12. The Advocate, The national gay & lesbian newsmagazine**

<http://www.advocate.com>

Blocked by: Cyberpatrol (Adult/Sexually Explicit)

**13. Australian Federation of AIDS Organisations**

<http://www.afao.org.au>

Blocked by: N2H2 (Nudity, Sex)

**14. Agape Church, Searcy, AR USA**

<http://www.agapechurch.com>

Blocked by: Websense (Adult Content)

**15. Alan Guttmacher Institute**

<http://www.agi-usa.org>

Blocked by: N2H2 (all N2H2 categories engaged), Smartfilter (Politics/Religion, Self Help/Health, Mature), Cyberpatrol (Adult/Sexually Explicit), Websense (Abortion Advocacy)

**16. Southern Alberta Fly Fishing Outfitters**

<http://www.albertaflyfish.com>

Blocked by: N2H2 (Pornography), Websense (Sex)

**17. Search Engines is the guide to searching at Internet search**

<http://www.alphasearch.org>

Blocked by: N2H2 (Pornography)

**18. Altindia.net**

<http://www.altindia.net>

Blocked by: N2H2 (Adults Only, Pornography)

**19. Environmental Support Group**

<http://www.altindia.net/esg>

Blocked by: N2H2 (Adults Only, Pornography)

**20. Temptu Paint On Temporary Tattoos**

<http://www.amazingraymond.com>

Blocked by: Smartfilter (Nudity)

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