

**HB**

**353**

**HFIN**

**FILE**

HB 353

2007 HOUSE FINANCE  
COMMITTEE VOTE SHEET

DATE: 4/02/08

Amend to Amend  
#5

Amendment: \_\_\_\_\_

FAIL

MEMBER

Favor

Oppose

HAWKER		✓
JOULE		✓
KELLY	✓	
NELSON		
STOLTZE		✓
THOMAS	✓	
CRAWFORD	✓	
FOSTER		
GARA	✓	
MEYER		
CHENAULT		✓

9

4

4

Yea \_\_\_\_\_

Nay \_\_\_\_\_



# FISCAL NOTE

STATE OF ALASKA  
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 353(STA)  
(H) Publish Date: 3/25/08

Identifier (file name): HB 353: HB353-DEED-LAM-02-22-08  
Title: An Act relating to the blocking of certain internet sites.  
Dept. Affected: Education & Early Development  
RDU: Librarians & Museums  
Library Operations

Sponsor: Representative Keller  
Requester: House State Affairs Component Number: 208

**Expenditures/Revenues** (Thousands of  
Note: Amounts do not include inflation unless otherwise noted below.)

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
TOTAL								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

No cost to the Department of Education and Early Development. Individual libraries will incur cost ranging from \$100 each year for very small libraries, to as much as \$20,000 for the largest library systems in the state. The costs are for software, annual licensing fees, maintenance, and staff time for this program. Libraries will also incur costs for required updates. The Act would also increase the number of libraries eligible to receive Public Library Assistant Grants from the state. This would result in each library receiving a reduced amount since the grants are currently being prorated.

Prepared by: Katherine H. Shelton, Alaska State Librarian and Director Phone: 465-2911  
Division: Division of Libraries, Archives, and Museums Date/Time: 2/22/08 3:00 PM  
Approved by: Barbara Thompson, Interim Commissioner Date: 2/22/2008

adopted  
4-1-08

25-LS1356\E

HOUSE BILL NO. 353

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KELLER, Wilson, Gatto

Introduced: 2/6/08  
Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the blocking of certain Internet sites at public libraries and to  
2 library assistance grants."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 14.56 is amended by adding a new section to read:

5           Sec. 14.56.335. Internet blocking compliance. Notwithstanding the other  
6 provisions of AS 14.56.300 - 14.56.340, the department may not make a grant under  
7 AS 14.56.300 - 14.56.340 to a public library that provides members of the public with  
8 access to the Internet unless the public library is complying with AS 14.56.500. In this  
9 section, "public library" has the meaning given in AS 14.56.500.

10 \* Sec. 2. AS 14.56 is amended by adding a new section to article 6 to read:

11           Sec. 14.56.500. Internet blocking filters required. (a) Except as provided by  
12 (b) of this section, a public library that provides members of the public with access to  
13 the Internet shall install and maintain in good working order Internet software filters  
14 that block Internet sites that depict the items described in AS 11.61.128(1)(A) - (F).

1           (b) If an adult has a research or other lawful purpose to access Internet sites  
2 that depict the items described in AS 11.61.128(1)(A) - (F), a public library may  
3 disable the technology measure for the adult.

4           (c) In this section,

5                 (1) "adult" means an individual who is 18 years of age or older;

6                 (2) "public library" means a library that is open to members of the  
7 public.

deleted 4/1/08

CS FOR HOUSE BILL NO. 353(STA)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/25/08  
Referred: Finance

Sponsor(s): REPRESENTATIVES KELLER, Wilson, Gatto

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the blocking or monitoring of certain Internet sites at public  
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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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5           Sec. 14.56.335. Internet blocking compliance. Notwithstanding the other  
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7 AS 14.56.300 - 14.56.340 to a public library that provides members of the public with  
8 access to the Internet unless the public library is complying with AS 14.56.500. In this  
9 section, "public library" has the meaning given in AS 14.56.500.

10 \* Sec. 2. AS 14.56 is amended by adding a new section to article 6 to read:

11           Sec. 14.56.500. Internet blocking filters or monitoring required. (a) Except  
12 as provided by (b) of this section, a public library that provides members of the public  
13 with access to the Internet shall

14                   (1) install and maintain in good working order Internet software filters

1 that block Internet sites that depict the items described in AS 11.61.128(1)(A) - (F); or  
2 (2) use an alternate monitoring system to prevent the viewing of  
3 Internet sites that depict the items described in AS 11.61.128(1)(A) - (F).

4 (b) If an adult has a research or other lawful purpose to access Internet sites  
5 that depict the items described in AS 11.61.128(1)(A) - (F), a public library may  
6 disable the Internet software filter for the adult or not use the alternate monitoring  
7 system for the adult.

8 (c) In this section,

9 (1) "adult" means an individual who is 18 years of age or older;

10 (2) "alternate monitoring system" means a monitoring system that does  
11 not use Internet software filters; in this paragraph, "monitoring system" includes a  
12 method that enables public library staff to see the screens of computers in the public  
13 library;

14 (3) "public library" means a library that provides the following  
15 services free of charge to members of the public:

16 (A) establishment and maintenance of a collection of books and  
17 other materials for loaning;

18 (B) access to interlibrary loan services;

19 (C) reading or other educational programs for children; and

20 (D) reference information.

adopted  
4-1-08

25-LS1356E

HOUSE BILL NO. 353

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KELLER, Wilson, Gatto

Introduced: 2/6/08

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

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13 the Internet shall install and maintain in good working order Internet software filters  
14 that block Internet sites that depict the items described in AS 11.61.128(1)(A) - (F).

1           (b) If an adult has a research or other lawful purpose to access Internet sites  
2 that depict the items described in AS 11.61.128(1)(A) - (F), a public library may  
3 disable the technology measure for the adult.

4           (c) In this section,

5                   (1) "adult" means an individual who is 18 years of age or older;

6                   (2) "public library" means a library that is open to members of the  
7 public.

SW

WITADANUN

25-LS1356E.1  
Bannister  
4/1/08

AMENDMENT |

Kelly

OFFERED IN THE HOUSE

TO: HB 353

- 1 Page 2, lines 6 - 7:
- 2 Delete all material and insert:
- 3 (2) "public library" means a library that
- 4 (A) provides the following services free of charge to members
- 5 of the public:
- 6 (i) establishment and maintenance of a collection of
- 7 books and other materials for loaning;
- 8 (ii) access to interlibrary loan services;
- 9 (iii) reading or other educational programs for children;
- 10 (iv) reference information; and
- 11 (B) is not operated by or affiliated with the University of
- 12 Alaska."

FAILED

AMENDMENT 2

OFFERED IN THE HOUSE

BY Gara

TO: HB353

1 Page 2, following line 7:

2 Insert a new bill section to read:

3 (d) This section does not apply to a public library that:

4 (1) has a policy prohibiting computer users from viewing internet sites that  
5 depict the items described in AS 11.61.128 (1)(A) - (F), and

6 (2) determines that complying with this section would require a cost that  
7 materially reduces library services made available to the public.

8

9 Renumber the following bill sections accordingly.

# 2007 HOUSE FINANCE COMMITTEE VOTE SHEET

#10353

DATE: 4/02/08

Amendment: #2 GARA

MEMBER

Favor

Oppose

KELLY		✓
<del>NEILSON</del>		
STOLTZE		✓
THOMAS		✓
<del>CRAWFORD</del>		
<del>FOSTER</del>		
GARA	✓	
HAWKER		✓
<del>JOULE</del>		
MEYER		✓
CHENAULT		✓

Yea 1

Nay 6

# ALASKA STATE LEGISLATURE

**Interim:**

600 East Railroad Avenue  
Wasilla, Alaska 99654  
Phone (907) 373-1842  
Fax: (907) 373-4729



**Session:**

State Capitol Building  
Juneau, Alaska 99801-1182  
Phone: (907) 465-2186  
Fax: (907) 465-3818

## REPRESENTATIVE WES KELLER DISTRICT 14 SPONSOR STATEMENT CS HOUSE BILL 353 (STA)

**"An Act relating to the blocking of certain Internet sites at public libraries and to library assistance grants."**

CS for House E. 353 will encourage public libraries to assure that our young people do not have access to adult internet sites. Presently, there is cost effective software that allows responsible adults to prevent access to sites that could be considered objectionable. Parents and guardians of children use this software to prevent access.

While children are prevented from accessing these sites at home, some public libraries do not use this blocking technology or because of staffing limitations cannot monitor computer use. A simple installation of the software or constant monitoring will prevent children from reaching adult sites.

Because of the concern that denying access might be considered unconstitutional, and because blocking software might block sites that are necessary for research, CSHB 353 includes language that allows adults to request that the software be disabled. The courts have already ruled this is an acceptable compromise.

CSHB 353 is also reactive in its approach should a library refuse to purchase and install the software or provide monitoring. The bill would restrict state and local grant money to the library for refusal.

In this high tech, instant access world we live in, what was once on the shelves of stores under plastic wraps is now just a click away. Passage of CSHB 353 will assure that public libraries are serving all of their customers in a responsible manner.

E-Mail: [Representative\\_Wes\\_Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)  
Call Juneau Toll free: (800) 468-2186  
Website: [www.akRepublicans.org/keller/](http://www.akRepublicans.org/keller/)

# 2007 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 4/1/08

Amendment: \_\_\_\_\_

MEMBER

Favor

Oppose

MEMBER	Favor	Oppose
<del>██████</del> HARRIS FOSM	—	
GARA		✓
HAWKER	✓	
JOULE	—	
KELLY	✓	
NELSON	—	
STOLTZE	✓	
THOMAS	✓	
CRAWFORD	✓	
MEYER	✓	
CHENAULT	✓	

Yea 7

Nay 1

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 20, 2008

**SUBJECT:** CSHB 353(STA) relating to the blocking or monitoring of certain Internet sites at public libraries and to library assistance grants (Work Order No. 25-LS1356\K)

**TO:** Representative Bob Lynn  
Chair of the House State Affairs Committee  
Attn: Nancy Manly

**FROM:**  Theresa Bannister  
Legislative Counsel

This memo accompanies the bill described above.

Free speech. The bill raises an issue under the First Amendment of the United States Constitution and art. I, sec. 5 of Alaska's constitution,<sup>1</sup> which limit the state's ability to impose restrictions on forms of speech based on the content of the speech involved. Internet site filtering by a library in order to protect children has been upheld by the U.S. Supreme Court in one case ("decision").<sup>2</sup> However, there were different concurring opinions, as well as dissenting opinions, and it is difficult to predict whether the specifics of this bill will satisfy the requirements of that case.

If I may be of further assistance, please advise.

TLB:med  
08-208.med

Enclosure

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<sup>1</sup> The state's provision is meant to be at least as protective of free expression as the federal provision. See Mickens v. City of Kodiak, 640 P.2d 818, 820 (Alaska 1982), citing the Proceedings of the Alaska Constitutional Convention 1305-07 (Jan. 5, 1956).

<sup>2</sup> United States v. American Library Association, Inc., 539 U.S. 194 (2003).

## Fact Sheet Web Filtering

Prepared For HB 353: *Act relating to the blocking of certain Internet sites at public libraries and to library assistance grants:*

### **State URL filtering background:**

Web filtering is accomplished by placing a device in between a user and the internet within the State's Executive Branch networking infrastructure. The device, when configured, will categorize all website requests and determine, via established policy, whether to allow or deny the web requests to the end user. Web use policy can be customized to allow diverse agency business needs. Currently, the State network uses Uniform Resource Locator (URL) filtering via an enterprise-wide software solution called Blue Coat.

In general, URL filtering at the State level is used for a number of reasons, including:

### **Employee Productivity:**

With unmanaged internet access, employees can be distracted by non-work related or unproductive activities. URL filtering helps manage employee access to websites, minimizing lost time on the internet, and lowering operating costs by minimizing bandwidth use to State business purposes.

### **Legal Liability:**

Personal internet use can expose organizations to legal liability when employees engage in illegal or inappropriate activities. URL filtering helps manage employee internet access and enforce personal use policies to mitigate legal liability up-front.

### **Internet Bandwidth usage:**

Depending on network capacity, the use of bandwidth-intensive applications such as streaming media or the downloading of music or videos by even a few employees can slow or shut down entire networks. URL filtering helps enforce internet usage policies based on bandwidth needs to prevent business losses and other issues that result from limited access to mission-critical applications.

### **Website security filtering:**

Web filtering solutions protect against: malicious websites, spyware, phishing and other frauds, potentially unwanted software, bot networks, keyloggers and other potentially harmful internet content.

### **URL Filtering Options:**

HB 353 contemplates securing independent internet connectivity in libraries throughout the State. With such independent connections, an end-point home solution, such as **NetNanny, Norton Internet Security or WebWatcher for \$60-\$100 per station** would accomplish the goals sought in HB 353. These various solutions offer different filtering settings per authenticated user, and obtain automatic updates from the manufacturer as new websites come online. This type of software is easy to install and maintain on an individual workstation basis.

In response to the committee's request for information regarding the cost of implementing filtering I am supplying the following. These are estimates of possible costs, as well as some actual figures as noted.

**Unalaska (Actual Cost) 2006 Population 3,940**

- Installation cost: \$11,620 which included in-house (on-line) training for one tech.
- Annual subscription maintenance: \$1,162
- Annual Library staff cost to disconnect filters for adults: \$1,999.40

**Haines (Estimate): 2006 Population 2,241**

- software installation : \$480
- required hardware upgrades: \$3500
- staff time for installation/training: \$3000
- software maintenance (licenses): \$300/year
- technology staff support \$3120/year
- Total installation cost: \$6980
- library staff questions/maintenance/ongoing training (turning off filters and managing use): \$1560/year

Pricing is quoted on the number of stations that will host the software. This makes it difficult to project costs for individual libraries. Vendors generally quote a price based on the size of the network. Pricing for network versions are higher and require more expertise to install and maintain. Network filters restrict wireless users and staff workstations.

Individual station software costs on average \$50 for commercially available filtering software sold to the home market. This cost would be per station. These are designed for home use. Most libraries purchasing the same software would pay a minimum of \$199. Staff time would be required to install and then turn filters on and off.

Only the very largest libraries in the state have in-house IT staff and most libraries operate with volunteers who may not have the expertise to turn filters on and off.

Many libraries also have computers that came to them via the Gates Foundation. These computers have security on them to prevent tampering. In order to turn filters on and off the security would have to be disabled first. This is a very complicated and time consuming task.

Mary Jo Joiner, President, Alaska Library Association

*Mary Jo Joiner*

## AMENDMENT I.

**Freedom of religion, of speech, and of the press.** 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; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.<sup>9</sup>

9. Proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

### Constitution of the State of Alaska

#### Art 1 Section 5. Freedom of Speech.

Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

#### I. GENERAL CONSIDERATION.

**Right is not absolute.** - In expressing the rights to free speech and privacy, the framers of the state constitution appear to have recognized a right of universal freedom and a right to be left alone which is rooted in the natural inclination of human beings. But these rights, in a free society such as this, have never been recognized as absolute and without limitations. *Messerli v. State*, 626 P.2d 81 (Alaska 1971).

**Precision of regulation must be the touchstone.** - Because of the "chilling effect" that overbroad laws have on the exercise of constitutional rights, broad prophylactic rules are suspect and precision of regulation must be the touchstone. *Marks v. City of Anchorage*, 500 P.2d 644 (Alaska 1972).

First amendment freedoms are delicate and vulnerable, as well as supremely precious in American 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.** *Marks v. City of Anchorage*, 500 P.2d 644 (Alaska 1972).

**Speech which is vehicle of crime.** - Speech is not constitutionally protected when it is the very vehicle of the crime itself. *Webb v. State*, 580 P.2d 295 (Alaska 1978).

**Limited restrictions allowed.** - Presumably a state can limit speech or assembly in specific places under limited circumstances. *Marks v. City of Anchorage*, 500 P.2d 644 (Alaska 1972).

It is only in the most limited circumstances that speech may be punished. *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971); *Marks v. City of Anchorage*, 500 P.2d 644 (Alaska 1972).

**The category of obscenity, which is unprotected, is very narrowly defined.** *Hanby v. State*, 479 P.2d 486 (Alaska 1970).

**Erotic speech may be punished as obscenity if the tests promulgated by the U.S. supreme court are met.** *Marks v. City of Anchorage*, 500 P.2d 644 (Alaska 1972).

## II. VAGUE AND OVERBROAD.

**Former delinquency statute.** - Former statute which criminalized acts "which cause or tend to cause, encourage or contribute to delinquency" was not overbroad, since only speech which advocated imminent lawless action and which was likely to produce such action was proscribed. *Holton v. State*, 602 P.2d 1228 (Alaska 1979).

**Former AS 11.15.134(a) did not implicate constitutional rights of adults.** - Since former AS 11.15.134(a), which made it a crime to commit a lewd or lascivious act upon or with the body of a child under 16 years of age, intending to arouse the sexual desires of either the actor or the child, prohibited only lewd and lascivious physical contact with children, that section did not implicate the constitutional right of adults to possess and exhibit literature or the right of adults to privacy in their homes at least insofar as that right protects parents dressing in front of children, those who tell dirty jokes, and adults who are passionately affectionate with other adults in the presence of children. *Anderson v. State*, 562 P.2d 351 (Alaska 1977).

**When ordinance is void-for-vagueness.** - An ordinance is void-for-vagueness where it fails to give a person or ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute and where it encourages arbitrary and erratic arrests and convictions. *Marks v. City of Anchorage*, 500 P.2d 644 (Alaska 1972).

Those generally implicated by the imprecise terms of a disorderly conduct ordinance poor people, nonconformists, dissenters, idlers - may be required to comport themselves according to the lifestyle deemed appropriate by the police and the courts. *Marks v. City of Anchorage*, 500 P.2d 644 (Alaska 1972).

UNITED STATES et al. v. AMERICAN LIBRARY ASSOCIATION, INC., et al. 539 U.S. 194  
(2003)

In 2003

Chief Justice Rehnquist, joined by Justice O'Connor, Justice Scalia, and Justice Thomas, concluded:

1. Because public libraries' use of Internet filtering software does not violate their patrons' First Amendment rights, CIPA does not induce libraries to violate the Constitution, and is a valid exercise of Congress' spending power. Congress has wide latitude to attach conditions to the receipt of federal assistance to further its policy objectives, *South Dakota v. Dole*, 483 U. S. 203, 206, but may not "induce" the recipient "to engage in activities that would themselves be unconstitutional," *Id.*, at 210.

2.

....the public forum principles on which the District Court relied are out of place in the context of this case. Internet access in public libraries is neither a "traditional" nor a "designated" public forum. See, e.g., *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 802-803.

SUPREME COURT OF THE UNITED STATES

UNITED STATES et al. v. AMERICAN LIBRARY  
ASSOCIATION, INC., et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA

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No. 02—361. Argued March 5, 2003—Decided June 23, 2003

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Two forms of federal assistance help public libraries provide patrons with Internet access: discounted rates under the E-rate program and grants under the Library Services and Technology Act (LSTA). Upon discovering that library patrons, including minors, regularly search the Internet for pornography and expose others to pornographic images by leaving them displayed on Internet terminals or printed at library printers, Congress enacted the Children's Internet Protection Act (CIPA), which forbids public libraries to receive federal assistance for Internet access unless they install software to block obscene or pornographic images and to

prevent minors from accessing material harmful to them. Appellees, a group of libraries, patrons, Web site publishers, and related parties, sued the Government, challenging the constitutionality of CIPA's filtering provisions. Ruling that CIPA is facially unconstitutional and enjoining the Government from withholding federal assistance for failure to comply with CIPA, the District Court held, *inter alia*, that Congress had exceeded its authority under the Spending Clause because any public library that complies with CIPA's conditions will necessarily violate the First Amendment; that the CIPA filtering software constitutes a content-based restriction on access to a public forum that is subject to strict scrutiny; and that, although the Government has a compelling interest in preventing the dissemination of obscenity, child pornography, or material harmful to minors, the use of software filters is not narrowly tailored to further that interest.

*Held:* The judgment is reversed.

**201 F. Supp. 2d 401, reversed.**

Chief Justice Rehnquist, joined by Justice O'Connor, Justice Scalia, and Justice Thomas, concluded:

1. Because public libraries' use of Internet filtering software does not violate their patrons' First Amendment rights, CIPA does not induce libraries to violate the Constitution, and is a valid exercise of Congress' spending power. Congress has wide latitude to attach conditions to the receipt of federal assistance to further its policy objectives, *South Dakota v. Dole*, 483 U.S. 203, 206, but may not "induce" the recipient "to engage in activities that would themselves be unconstitutional," *id.*, at 210. To determine whether libraries would violate the First Amendment by employing the CIPA filtering software, the Court first examines their societal role. To fulfill their traditional missions of facilitating learning and cultural enrichment, public libraries must have broad discretion to decide what material to provide to their patrons. This Court has held in two analogous contexts that the Government has broad discretion to make content-based judgments in deciding what private speech to make available to the public. *Arkansas Ed. Television Comm'n v. Forbes*, 523 U.S. 666, 672—674; *National Endowment for Arts v. Finley*, 524 U.S. 569, 585—586. Just as forum analysis and heightened judicial scrutiny were incompatible with the role of public television stations in the former case and the role of the

National Endowment for the Arts in the latter, so are they incompatible with the broad discretion that public libraries must have to consider content in making collection decisions. Thus, the public forum principles on which the District Court relied are out of place in the context of this case. **Internet access in public libraries is neither a “traditional” nor a “designated” public forum. See, e.g., *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 802—803. Unlike the “Student Activity Fund” at issue in *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 834, Internet terminals are not acquired by a library in order to create a public forum for Web publishers to express themselves. Rather, a library provides such access for the same reasons it offers other library resources: to facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality. The fact that a library reviews and affirmatively chooses to acquire every book in its collection, but does not review every Web site that it makes available, is not a constitutionally relevant distinction. The decisions by most libraries to exclude pornography from their print collections are not subjected to heightened scrutiny; it would make little sense to treat libraries’ judgments to block online pornography any differently. Moreover, because of the vast quantity of material on the Internet and the rapid pace at which it changes, libraries cannot possibly segregate, item by item, all the Internet material that is appropriate for inclusion from all that is not. While a library could limit its Internet collection to just those sites it found worthwhile, it could do so only at the cost of excluding an enormous amount of valuable information that it lacks the capacity to review. Given that tradeoff, it is entirely reasonable for public libraries to reject that approach and instead exclude certain categories of content, without making individualized judgments that everything made available has requisite and appropriate quality. Concerns over filtering software’s tendency to erroneously “overblock” access to constitutionally protected speech that falls outside the categories software users intend to block are dispelled by the case with which patrons may have the filtering software disabled. Pp. 6—13.**

2. CIPA does not impose an unconstitutional condition on libraries that receive E&nbhyph;rate and LSTA subsidies by requiring them, as a condition on that receipt, to surrender their First Amendment right to provide the public with access to constitutionally protected speech. Assuming that appellees may assert an “unconstitutional conditions” claim,

that claim would fail on the merits. **When the Government appropriates public funds to establish a program, it is entitled to broadly define that program's limits.** *Rust v. Sullivan*, 500 U.S. 173, 194. As in *Rust*, the Government here is not denying a benefit to anyone, but is instead simply insisting that public funds be spent for the purpose for which they are authorized: helping public libraries fulfill their traditional role of obtaining material of requisite and appropriate quality for educational and informational purposes. **Especially because public libraries have traditionally excluded pornographic material from their other collections, Congress could reasonably impose a parallel limitation on its Internet assistance programs.** As the use of filtering software helps to carry out these programs, it is a permissible condition under *Rust*. Appellees mistakenly contend, in reliance on *Legal Services Corporation v. Velazquez*, 531 U.S. 533, 542—543, that CIPA's filtering conditions distort the usual functioning of public libraries. In contrast to the lawyers who furnished legal aid to the indigent under the program at issue in *Velazquez*, public libraries have no role that pits them against the Government, and there is no assumption, as there was in that case, that they must be free of any conditions that their benefactors might attach to the use of donated funds. Pp. 13—17.

**Justice Kennedy concluded that if, as the Government represents, a librarian will unblock filtered material or disable the Internet software filter without significant delay on an adult user's request, there is little to this case.** There are substantial Government interests at stake here: The interest in protecting young library users from material inappropriate for minors is legitimate, and even compelling, as all Members of the Court appear to agree. Given this interest, and the failure to show that adult library users' access to the material is burdened in any significant degree, the statute is not unconstitutional on its face. If some libraries do not have the capacity to unblock specific Web sites or to disable the filter or if it is shown that an adult user's election to view constitutionally protected Internet material is burdened in some other substantial way, that would be the subject for an as-applied challenge, not this facial challenge. Pp. 1—2.

**Justice Breyer agreed that the "public forum" doctrine is inapplicable here and that the statute's filtering software provisions do not violate the First Amendment, but would reach that ultimate conclusion through a different approach.** Because the statute raises special First Amendment concerns, he would not require only a "rational basis" for the statute's restrictions.

At the same time, "strict scrutiny" is not warranted, for such a limiting and rigid test would unreasonably interfere with the discretion inherent in the "selection" of a library's collection. Rather, he would examine the constitutionality of the statute's restrictions as the Court has examined speech-related restrictions in other contexts where circumstances call for heightened, but not "strict," scrutiny—where, for example, complex, competing constitutional interests are potentially at issue or speech-related harm is potentially justified by unusually strong governmental interests. The key question in such instances is one of proper fit. The Court has asked whether the harm to speech-related interests is disproportionate in light of both the justifications and the potential alternatives. It has considered the legitimacy of the statute's objective, the extent to which the statute will tend to achieve that objective, whether there are other, less restrictive ways of achieving that objective, and ultimately whether the statute works speech-related harm that is out of proportion to that objective. The statute's restrictions satisfy these constitutional demands. **Its objectives—of restricting access to obscenity, child pornography, and material that is comparably harmful to minors—are "legitimate," and indeed often "compelling."** No clearly superior or better fitting alternative to Internet software filters has been presented. Moreover, the statute contains an important exception that limits the speech-related harm: **It allows libraries to permit any adult patron access to an "overblocked" Web site or to disable the software filter entirely upon request.** Given the comparatively small burden imposed upon library patrons seeking legitimate Internet materials, it cannot be said that any speech-related harm that the statute may cause is disproportionate when considered in relation to the statute's legitimate objectives. Pp. 1—6.

*Rehnquist, C. J., announced the judgment of the Court and delivered an opinion, in which O'Connor, Scalia, and Thomas, JJ., joined. Kennedy, J., and Breyer, J., filed opinions concurring in the judgment. Stevens, J., filed a dissenting opinion. Souter, J., filed a dissenting opinion, in which Ginsburg, J., joined.*

There were questions in the committee about the federal funding (E-rate) that libraries receive to subsidize telecommunications and internet access. These following may clarify some points:

Federal E-rate funding is a reimbursement program.

- o The E-rate is a discount on telecommunications and internet access charges. Libraries do not receive direct federal cash payments under E-rate for either internet access or telecommunications.
- o Telecommunications and internet service providers (ISP's) receive payment. ISP's and telecoms pass on a discounted rate to libraries either:
  - o By discounting bills throughout the year, or
  - o By paying a lump sum reimbursement after the end of the E-rate fiscal year in June. Libraries must apply for this reimbursement in July and usually do not receive payment until fall.
- o The dollar amount of the E-rate discounts for individual libraries is not predictable from year to year and is not announced until after the beginning of the July-June fiscal year followed by most libraries.
- o Because libraries cannot know either the amount or time of payment, libraries must budget to have funds on hand for both telecommunications and internet access as though the E-rate did not exist. E-rate does not substitute for state grants, which are a predictable, budgeted funding source on which libraries rely for day-to-day operation.

Communities may make the decision to opt out of portions of the E-rate that are governed by CIPA for a variety of reasons in addition to the technical difficulties and costs associated with implementing filtering software.

- o E-rate subsidies cannot be applied to CIPA implementation or filtering software purchases.
- o Applying for the E-rate is complex and time consuming. This is especially true for internet access under the E-rate that is governed by CIPA.

School districts and larger public libraries generally have one administrative position that does little else but work on E-rate applications and compliance for several months of the year. Applying only for the telecommunications portion of E-rate requires the time a professional librarian at larger public libraries for several weeks a year. Adding internet and CIPA compliance would at least double this workload. In all-volunteer libraries, the administrative burden of complying with E-rate and CIPA can make it impossible to apply for these funds.

- o The amount of the subsidy received through E-rate is tied to the poverty rate of the community and determined by enrollment in the school lunch program.

In communities where the discount is 50% or less, as responsible administrators, librarians need to weigh the staff cost of the application process against the rate reimbursed by the discount. In some cases, the discount available through the E-rate for internet access is less than discounts offered by the ISP's for bandwidth upgrades.

- o Lower-tech, lower-cost solutions for internet use control, such as internet use policies, machine placement and staff oversight offer not only a locally appropriate approach, but an affordable solution for many libraries.

# LEGISLATIVE RESEARCH REPORT

FEBRUARY 14, 2008



REPORT NUMBER 08.150

## INTERNET ACCESS IN ALASKA'S PUBLIC LIBRARIES

PREPARED FOR REPRESENTATIVE WES KELLER

BY ROGER WITHINGTON, LEGISLATIVE ANALYST

You asked for information regarding Alaska's public libraries. Specifically, you wished to know the number of public libraries in Alaska that allow the public to access the internet. In addition, you asked how many such libraries have filtering software installed that restricts access to websites that provide adult content.

According to the Alaska Department of Education and Early Development (DEED), approximately 89 libraries received a Public Library Assistance Grant (PLAG) in 2005.<sup>1</sup> According to Patience Frederiksen, Grants Administrator with the DEED, PLAG recipients represent all but three or four public libraries in Alaska.<sup>2</sup> As part of the grant process, Ms. Frederiksen surveys the public libraries regarding their activity. Of the 89 libraries that received a PLAG in 2005, two libraries did not offer internet access, three libraries did not report whether or not they offered internet access, and 84 libraries offered public internet access.<sup>3</sup> These 84 libraries provided 549 computer terminals that allowed the public to access internet. The annual number of times patrons used electronic resources in these 84 libraries for 2005 was 1,147,461. We include, as Attachment A, the General Information section and the FY2005 section of the report *Statistics of Alaska Public Libraries*, which you may find helpful.

Ms. Frederiksen also collects information on the number of libraries allowing the public to access the internet that have placed filtering software on their computer terminals. In 2007, 87 libraries responded to Ms. Frederiksen's queries regarding filtering software. Three libraries reported that they did not offer internet access to the public, five libraries did not respond to Ms. Frederiksen's

<sup>1</sup> The Library Assistance Grant Fund is set forth in Alaska Statute 14.56.300. The statute states that, subject to legislative appropriations, the Department of Education and Early Development shall provide grants to eligible libraries for public library operations, for interlibrary cooperation, or for regional library services.

<sup>2</sup> Patience Frederiksen, Grants Administrator, Alaska Department of Education and Early Development, can be contacted at 907-269-6566.

<sup>3</sup> Please note that 26 of the 89 public libraries are "dual purpose" and are located in either a public K-12 school or college or university campus.

queries, 35 libraries (40.2%) reported that they have not installed filtering software, and 44 libraries (50.6%) reported that they have installed filtering software on their computers that provide internet access to the public.

Of the 44 libraries with filtering software installed on computers that provide internet access to the public, 36 reported that they have the capacity to turn the filtering software off upon request. Of those 36 libraries, 32 reported that they were asked by a patron to turn off the filter during the previous year; 25 libraries (69.4%) were asked ten times or fewer to turn off the filter while seven (19.5%) reported being asked 11 or more times.<sup>4</sup>

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I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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<sup>4</sup> Ms. Frederiksen did not provide details regarding the parameters of precisely what each library filters. The filtering criteria may differ for each library. As such, some libraries may "filter-out" adult content internet sites such as those that provide pornography or gambling as well as sites that provide medical information.

ALA American Library Association

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## MEETING CIPA REQUIREMENTS WITH TECHNOLOGY

By Richard W. Boss

Public libraries have been concerned with the issue of access control versus access management for a number of years. While some public libraries have sought to deny access by children to some Web sites, a larger number have focused on managing access, including authenticating patrons, providing links to selected Web sites, metering of use, and compiling of reports. As recently as 2002, fewer than 25 percent of public libraries had blocking or filtering products on all public Internet workstations and 17 percent had blocking or filtering products on only some. More than 58 percent used nothing at all. With the adoption of the Children's Internet Protection Act (CIPA), the issue has become financial as well as philosophical because schools and libraries will lose federal funds if they do not control access by minors to sites that are proscribed by the legislation.

Despite the fact that the terms "blocking" and "filtering" are often used interchangeably, including by legislators, they do have different meanings. "Blocking" refers to stopping access to something based on its URL; "filtering" refers to stopping access to something based on its content. Almost all of the available products do blocking, but not all do filtering. Nevertheless, vendors may refer to a product that does only blocking as a "filter."

CIPA compliance is required when using funds for particular purposes from three federal programs: E-rate, ESEA Title II D, and LSTA. When a school or library receives discounts from the E-rate program and either or both of the other programs, its CIPA requirements take precedence over the requirements in the ESEA or LSTA programs. A related act known as the Neighborhood Children's Internet Protection Act (NCIPA) focuses on what has to be included in a school or library's Internet safety policy.

There are two basic requirements in the CIPA legislation:

1. A school or library must have some type of blocking or filtering technology on all of its computers from which there is access to the Internet. Both patron and staff computers are affected. The technology must protect against access to visual depictions described as obscene, child pornography, or harmful to minors in the Act. CIPA does not require the blocking or filtering of text. The law does not address the question of laptops brought in by staff and patrons, but a consensus has emerged that these need not be blocked or filtered.
2. A school or library must have an Internet safety policy and hold a public

meeting to review the policy. The policy must incorporate the criteria described in NCIPA.

Whether a school or library blocks and filters content other than the visual depictions defined in the law is a local decision.

The FCC has ruled that if a member of a consortium is not in compliance with the law, only the non-compliant members will be penalized.

The law states that any authorized school or library staff member may disable the blocking or filtering product to allow an adult to have unrestricted Internet access for any lawful purpose. Adults are defined as persons 17 years of age or older. A strict reading of the law would preclude coding the status of a patron in the library card and automatically turning off the blocking or filtering when the I.D. was entered.

The Federal Communications Commission (FCC) is charged with enforcement of CIPA/NCIPA for the E-rate program. The Department of Education (DOE) and the Institute for Museum and Library Services (IMLS) are charged with ESEA and LSTA enforcement respectively, but a school or library receiving E-rate discounts and ESEA or LSTA funding needs to comply with CIPA's E-rate requirements to obtain funding from any of the programs. Schools not receiving E-rate discounts, must certify that they have an Internet Safety Policy in place in order to receive ESEA funding that will be used for Internet access; public libraries not receiving E-rate discounts must certify that they have an Internet Safety Policy in place in order to receive LSTA funding that will be used for Internet access.

It is not possible to discuss all of the available blocking and filtering products in this TechNote. The eight that appear to have been most widely adopted by libraries are discussed herein. For additional objective evaluation of blocking and filtering products, consult a report by Australia's CSIRO for NetAlert and the Australian Broadcasting Authority at [www.aba.gov.au/Internet/research/filtering/filtereffectiveness.pdf](http://www.aba.gov.au/Internet/research/filtering/filtereffectiveness.pdf)

All of the products were developed before CIPA, either as products for home use or for organizations seeking to control the activities of employees. They, therefore, block and filter words as well as images. All of the products contain a list of URLs that are blocked, but the list is often not available for review. Some also contain content analysis tools that filter. Only two use object analysis. For example, a graphic image with a great deal of flesh tones will be filtered. All of the products are password controlled. Online and telephone technical support is available for all of the products.

The products developed for home use are client-based; those developed for organizations are server based. However, two vendors of client-based products introduced a server option after CIPA was passed.

### Blocking and Filtering Products

Best N2H2 is a server-based blocking product that can be run on a wide variety of platforms, including firewall servers and network servers. The company targets corporate and institutional users. Best employs a full-time staff to categorize Web content. The 45 categories include adults only, drugs, lingerie, nudity, personals, sex, swimsuits, and violence. More than 150,000 sites that are blocked. A purchaser can select the categories to be blocked. The product may be used to block e-mail and chat rooms. There is a 30-day free evaluation period, however,

the time and effort required to configure the product on a server make it a good idea to undertake careful screening by consulting reviewing media before undertaking a trial.

A study by eTesting Labs for the U.S. Department of Justice in 2001 determined that N2H2 had the highest accuracy rate of any product it tested. It blocked 98 percent of the inappropriate sites used in the test. The study report does not appear to be available.

The author's own experience with N2H2 is that it blocks a lower percentage of non-pornographic sites than others.

CyberPatrol 6.1 is a client-based blocking and filtering product developed to be run on Windows 98/Me/NT/2000/XP PCs. While it targets home users, it has been purchased by a number of small libraries because it is relatively inexpensive. Its list price is \$39 for a one-year subscription. The price includes software updates to CyberList, a "blacklist" of unacceptable sites, and online or telephone support. A 14-day free trial is available for evaluation.

The CyberList sorts sites into a number of content categories, including partial nudity, full nudity, sexual acts/text, gross depictions/texts, sex education, and drugs/drug culture. All categories are blocked by default, but a purchaser can select the categories that are to be accessible without blocking. There are also settings that restrict access to e-mail, chat rooms, and newsgroups. The product also does filtering using keyword analysis in content. It is also possible to enter specific words that are to be filtered.

A server based option is now available to larger libraries. Prices are quoted on request.

*CyberSitter 2003* is a client-based blocking and filtering product designed to be run on a PC with Windows 95/98/Me/NT/2000/XP. While it targets home users, it has been purchased by a number of small libraries because it is inexpensive, takes very little disk space, and easy to install. The list price is \$39.95 for a single computer license, \$59.95 for two, \$74.95 for three, \$99.95 for five, and \$199.00 for ten licenses. There are free list updates for one year. A two-year subscription to program upgrades is \$20. The program takes just 3.0 MB of disk space. Even though there are 30 categories of filtering, the menus are simple.

The subscription service not only uses a list of sites that deal with sex, drugs, hate, and violence, but also uses a content recognition system on sites that are not on the list. It filters access or will allow access after deleting words and phrases that appear to be objectionable. This can make a page impossible to read. The content recognition also results in a somewhat higher error rate than with a list of sites that have been examined by a vendor's staff. There is a way to add sites to block and there is a mechanism for overriding blocked sites. It can be set to filter out words in newsgroups, mail, chat, or messaging programs. URLs that have been blocked, but that are deemed suitable for minors, can be added to a "white list" so that they will not be blocked in the future. There is a simple on/off switch that can be accessed by someone with the appropriate password.

*CyberSitter* has won *PC Magazine's* Editor's Choice award for several years in a row.

A server-based option is available to larger libraries. The company quotes prices on request.

CybraryN Solutions Libraries that want only the blocking and filtering module and do not have a Dynix or VFLS system should deal directly with Fast Data Technology as that will result in a lower price. Pricing begins at 25 concurrent users and goes to a site license for more than 1,000 concurrent users. There is no published price list. FastTracker is also available as a hosted service.

FastTracker uses not only a URL list, but also a content analysis tool. The company estimates that 75 percent of the sites that are blocked are on its list, and 25 percent are filtered as the result of content analysis. There does not appear to be a word list available, nor is there a way of permitting access to sites that contain words that are objectionable for reasons other than pornography. Its 30 categories are unusually broad, including job search and shopping sites. That is due to the fact that the product was developed for organizations that are concerned about staff time lost due to surfing of the Internet that is not work-related. One of the claimed advantages of FastTracker is that policies for staff users can be set differently than for patrons, and extensive reports are provided on where users went and for how long.

I-Gear 3.5 is a server-based blocking and filtering product that can be run on a Windows NT Server 4.0 or later, Sun Solaris 2.x server or later, or Red Hat Linux server 5.2 or later. It groups Web sites it has examined into 27 categories that can be blocked or not blocked. In addition it uses a Dynamic Document Review (DDR) that examines incoming text using key words and phrase that have both positive and negative weights. The resultant points score for a document is compared with threshold to determine whether the document should be filtered. Updates are available online via a single button click or the updates can be set to download automatically as they are released.

Prices are quoted after a library submits information about its size. They are negotiable.

McAfee Parental Controls 1.0 is a client-based blocking and filtering product that can be used on any PC or Mac. It is priced at \$49.99, but is most often sold as part of McAfee InternetSecurity 5.0, a \$79.99 package that includes antivirus, firewall, and privacy features. The price includes free updates and free technical support for life.

The product has both a blocked-sites list and a word filter for detecting inappropriate content. Each can be locally edited. This gives librarians the opportunity to improve the accuracy of the blocking and filtering. It can filter pop-up ads and file sharing services. A unique feature of the product is object analysis. Unfortunately, it does not differentiate very well between famous paintings and pornography.

NetNanny 5.0 is a client-based blocking and filtering product designed to be run on Windows 98/93SE/ Me/ NT 4.2/XP PCs. It targets home, school, and library users. It is inexpensive at \$39.95 list, but it requires substantially more computer resources than its major competitors. It requires a minimum of 32 MB of RAM and 60 MB of hard drive space. While earlier versions required a tedious manual set-up, the current release is self-installing. It defaults to the most secure setting.

There are built-in lists of URLs and permitted and restricted words that can be modified by someone with an appropriate password. New lists of URLs can be downloaded manually or automatically on a daily, weekly, or monthly basis. It is possible to add URLs locally. Quota-based filtering makes it possible to filter Web pages containing more than a specified number of restricted words from the

complete word list. An option allows access to be limited to sites that have been specifically authorized. A "Can Go" list of 3,000 Website recommended for children is available.

One unique feature is that it includes object analysis. As is the case with McAfee Parental Controls 1.0, it does not reliably differentiate between art and pornography. Another unique feature is that it can prevent family names, addresses, phone numbers and credit card numbers being sent from the PC.

Websense Enterprise is a server-based product that was developed for Fortune 500 companies to enable them to improve productivity and security. It manages Internet access, blocks peer-to-peer file sharing, and blocks undesirable sites using a large database of URLs that is updated daily. There are 88 categories. Particularly useful is the separation of sex and sex education sites. A companion product called Websense Enterprise Reporter has more than 80 pre-defined report templates.

The server can be a Pentium III or greater processor with 512 MB of RAM or a Sun Ultra 10 Processor with 512 MB of RAM. The operating system can be Windows 2000 or 2003 Server, Red Hat Linux 8.0-9.0, or Sun Solaris 2.6-9.

The product is suitable only for libraries that have a large number of workstations because the license fee is \$15,000 a year. A single license covers up to 1,000 workstations.

#### Questions to Ask of Vendors

The American Library Association's E-rate Task Force has developed a list of questions to ask vendors. There were 70 questions on the list as of March 1, 2004. Each question will not be relevant for all libraries. The list is available at

#### Related Files

PLA is a division of the American Library Association. Copyright Statement.

PLA Tech Note prepared by Karen Schneider



The ACLU challenged COPA on behalf of a group of plaintiffs who provide, commercial content for the Internet or who received such content. The trial court found the law unconstitutional on First Amendment grounds. ~~The Third Circuit Court of Appeals~~ agreed that the law was unconstitutional, but said it was unconstitutional because of its reliance on "contemporary community standards." This made the law overbroad.

The U.S. Supreme Court reversed the Third Circuit's decision on May 13, 2002, on very narrow grounds. The Supreme Court did not decide on the constitutionality of COPA, finding only that COPA's reliance on "community standards" does not by itself make the law unconstitutional. As a result, the Supreme Court returned the matter to the Third Circuit Court of Appeals for a fuller consideration of the First Amendment issues raised by COPA's restrictions on Internet speech. All nine justices agreed that the injunction preventing any enforcement of COPA must remain in place while the lower courts further examine COPA's constitutionality.

Because COPA addresses only material sent over the Internet for commercial purposes, it does not directly affect libraries. FTRF joined an *amicus curiae* brief in support of the parties' First Amendment argument.

#### **ALA v. United States (Children's Internet Protection Act)**

The **Children's Internet Protection Act (CIPA)** requires libraries and schools to install filters on their Internet computers to retain federal funding and discounts for computers and computer access. Because this law directly affected libraries and their ability to make legal information freely available to their patrons, the American Library Association and the Freedom to Read Foundation filed a lawsuit to overturn CIPA, but the Supreme Court on June 23, 2003, in a 6-3 decision, upheld the constitutionality of the Children's Internet Protection Act (CIPA). Although it does not make the case easier to bear, the decision in *United States v. American Library Association* was a plurality decision. [According to "The Modern Problem of Supreme Court Plurality Decision: Interpretation in Historical Perspective" by Adam S. Hochschild, "problems arise when there is less than a clear majority speaking for the Court—when the leading opinion of the Court is a plurality opinion. A Supreme Court plurality decision holds ambiguous precedential value. . . . [A] plurality opinion, which represents the rationale of less than half of the Justices, is . . . problematic. A majority opinion may command more authority than a plurality decision, but precisely what authority does a plurality decision command? In other words, how should courts apply a plurality decision to subsequent controversies involving similar issues?]

Justices Kennedy and Breyer, who joined in Rehnquist's conclusion, but not the reasoning behind it, may have given ALA "loopholes" to move forward.

The decision indicates that CIPA is constitutional for children, but not for adults. Kennedy was very specific in his opinion, saying he would not have voted to uphold CIPA if he had not been assured that CIPA does not apply for adults.

During the U.S. Supreme Court argument, Solicitor General Theodore Olsen opened his remarks by saying that anytime an adult patron wants unfiltered access to a computer, he or she may ask a librarian to disable the filter, and the librarian will do so. His statement was contrary to what CIPA states, which is that a librarian "may" disable a filter "for bona fide research or other lawful purpose."

Kennedy also implied it is now incumbent on the filtering companies to develop a disabler that is both easily and quickly applied; he further implied that if the filtering companies do not do this, ALA may have a cause of action against the filtering companies. Kennedy also said that while CIPA may be constitutional on its face, it may not be constitutional in an "as applied" library setting.

#### **Brief History of CIPA**

The three-judge panel sitting in the Eastern District of Pennsylvania issued a decision on May 31, 2002, holding that the CIPA statute is facially unconstitutional and violates the First Amendment. They held that "we are constrained to conclude that the library plaintiffs must prevail in their contention that CIPA requires them to violate the First Amendment rights of their patrons, and accordingly is facially invalid"; the three-judge panel ruled Sections 1712(a)(2) and 1721(b) of the Children's Internet Protection Act to be facially invalid under the First Amendment and permanently enjoined the government from enforcing those provisions.

Because the three-judge panel permanently enjoined the FCC and LSTA from withholding funds from public libraries who have chosen not to install filters on all

terminals, public libraries thus are not required to install filters on their computers in order to receive funds from either agency.

The opinion was unanimous. The opinion was written by Chief Judge Becker of the Third Circuit and joined by U.S. District Judges Fullam and Bartle.

The Court held that the CIPA statute is unconstitutional because the mandated use of filtering on all computers will result in blocked access to substantial amounts of constitutionally protected speech.

The Court found that filters both overblock (block access to protected speech) and underblock (allow access to illegal or unconstitutional speech).

The Court held that less restrictive alternatives exist to allow public libraries to protect children from material that is illegal for them to access. The Court found that public libraries can—and indeed that many do—use the following less restrictive alternatives:

1. Filters offered as a choice for families to use for their own children at the public library;
2. Education and Internet training courses;
3. Enforcement of Internet Use policies by library staff; and
4. Placement of terminals, use of privacy screens or utilization of recessed monitors.

According to a Jenner & Block memorandum dated June 18, 2002, the three-judge panel in the CIPA case held that the FCC and IMLS cannot withhold funds on the ground that a public library has failed to install mandatory filters on every computer. The Court held that "[b]ecause of the inherent limitations in filtering technology, public libraries can never comply with CIPA without blocking access to a substantial amount of speech that is both constitutionally protected and fails to meet even the filtering companies' own blocking criteria." While this decision is directly binding only on the agencies and is not a directive to any particular library, the factual findings and legal conclusions of the Court may serve as useful precedents for other lower courts. ALA thus urges any library using mandatory filtering software to consult with legal counsel to reevaluate their Internet Use Policy and assess the risk of future litigation.

The Justice Department, acting on behalf of the Federal Communications Commission and the U.S. Institute of Museum and Library Sciences, formally notified the Supreme Court on June 20 that it would appeal this ruling.

#### ALA Press Releases on CIPA

#### Latest Information on CIPA

The Children's Internet Protection Act (CIPA) designates federal funding for libraries that install filters on all its computers. Libraries that do not accept federal funding do not have to install filters. That is, the Supreme Court's opinion has no effect on libraries that are not covered by CIPA (i.e., libraries that do not receive e-rate discounts or LSTA funds for the provision of public Internet access).

Potential Legal Challenges to the Application of the Children's Internet Protection Act (CIPA) in Public Libraries: Strategies and Issues by Paul T. Jaeger and Charles R. McClure

For additional information on CIPA, see ALA's CIPA Web Site, Public Libraries and the Children's Internet Protection Act (CIPA): Legal Sources, CIPA Supreme Court Decision.

See also Filters and Filtering.

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Links to non-ALA sites have been provided because these sites may have information of interest. Neither the American Library Association nor the Office for Intellectual Freedom necessarily endorses the views expressed or the facts presented on these sites; and furthermore, ALA and OIF do not endorse any commercial products that may be advertised or available on these sites.

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**Sec. 11.61.128. Electronic distribution of indecent material to minors.**

- (a) A person commits the crime of electronic distribution of indecent material to minors if
- (1) the person, being 18 years of age or older, knowingly distributes to another person by computer any material that depicts the following actual or simulated conduct:
    - (A) sexual penetration;
    - (B) the lewd touching of a person's genitals, anus, or female breast;
    - (C) masturbation;
    - (D) bestiality;
    - (E) the lewd exhibition of a person's genitals, anus, or female breast; or
    - (F) sexual masochism or sadism; and
  - (2) either
    - (A) the other person is a child under 16 years of age; or
    - (B) the person believes that the other person is a child under 16 years of age.
- (b) In this section, it is not a defense that the victim was not actually under 16 years of age.
- (c) Except as provided in (d) of this section, electronic distribution of indecent material to minors is a class C felony.

(d) Electronic distribution of indecent material to minors is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

(( 2 ch 97 SLA 2005; am 6 ch 24 SLA 2007))

**Effect of amendments.** The 2007 amendment, effective July 1, 2007, added the paragraph (a)(1) and (a)(2) designations, substituted "the following actual or simulated conduct:" and paragraphs (a)(1)(A) - (F) for "an act described in AS 11.41.455(a)(1) - (7)" in paragraph (a)(1), and added "either" near the beginning of paragraph (a)(2), and made related changes.

**Effective dates.** Section 2, ch. 97, SLA 2005, which enacted this section, took effect on November 28, 2005.

**Editor's notes.** Section 5, ch. 97, SLA 2005, provides that this section applies "to offenses occurring on or after November 28, 2005."

Section 36(b), ch. 24, SLA 2007, provides that the 2007 amendment of (a) of this section applies "to acts committed on or after July 1, 2007."