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## Internet Filters and the Children's Internet Protection Act

*CIPA imposes Internet filtering on public schools and libraries*

Congress passed the Children's Internet Protection Act (CIPA) in 2000 to protect children from sexually explicit material on the Internet. CIPA requires public schools and libraries that receive federal E-rate discounts for Internet access or obtain federal grants to provide electronic information services to install software filters that prevent library users from gaining Internet access to obscene, pornographic, or visually harmful material. (In fiscal year 2002, E-rate discounts totaled \$58.5 million, and grants for information services totaled \$149 million.)

CIPA allows, but does not require, librarians to disable software filters or unblock specific Internet sites at the request of an adult library user or for research or other lawful purposes. CIPA gives librarians no procedures or standards for deciding whether or not to disable filters or unblock sites when requested, or to require adult library users making such requests to identify themselves. CIPA also does not specify what filtering systems libraries might use—whether keyword or site blocking—with the consequence that libraries implement CIPA differently.

*Unlike earlier federal legislation, CIPA is constitutionally defensible*

CIPA and other laws dealing with children's exposure to sexually explicit materials on the Internet have been making their way through the courts. CIPA is the third law since 1996 that Congress passed to address parents' concerns about children's access to harmful Internet materials and the only one that the U.S. Supreme Court has found constitutionally defensible.

The U.S. Supreme Court struck down the 1996 Communications Decency Act (CDA), which made it a crime to put on the Internet sexually explicit material accessible to children. The Court found that the law burdened protected speech and failed to protect children.

The Supreme Court prohibited enforcement of the 1998 Child Online Protection Act (COPA), which made it a crime for commercial websites to disseminate Internet communications harmful to children without restricting children's access to the communications. The Court ruled in 2004 that COPA restrictions were too broad and sent the case back to a lower court to rule on types of technology that allow adults to see and buy legal material and keep objectionable material away from children.

The Supreme Court found that several provisions distinguished CIPA from the CDA and COPA, making CIPA constitutionally defensible.

*Federal district court found CIPA unconstitutional because it forced*

The American Library Association (*American Library Association v. U.S.*) and the American Civil Liberties Union (*Multnomah County Public Library v. U.S.*) challenged CIPA in federal district court in Pennsylvania, arguing that the law forced public libraries to choose between censoring Internet resources to the

***public libraries to censor, violate the First Amendment***

detriment of the library users who need Internet access most (10 percent of the 143 million Americans who regularly use the Internet rely on access at a public library) or foregoing much needed federal funds. The cases were consolidated and a three-judge panel ruled CIPA unconstitutional in 2002 because libraries that comply with CIPA's filtering requirement block access to constitutionally protected material. The court reasoned that CIPA imposes an overly broad content-based restriction on libraries that, as a designated public forum, provide library users with Internet access to information from millions of speakers worldwide.

The court found that there were less restrictive alternatives available to further the government's compelling interest in preventing children's access to obscene, pornographic, or visually harmful material. Three alternatives included requiring children to use computers in direct view of library staff, placing unfiltered monitors in remote locations, and installing privacy screens or recessed monitors.

***Supreme Court finds CIPA constitutionally permissible if adult patrons can ask libraries to unblock sites, remove filters***

The U.S. Justice Department appealed the federal district court decision to the U.S. Supreme Court under a CIPA provision for expedited review. In a 6-to-3 decision, the Supreme Court reversed the lower court, holding that CIPA does not violate the First Amendment rights of library users, exceed Congress' power to spend, or impose unconstitutional requirements on libraries seeking federal assistance (*U.S. v. American Library Association (2003)*). The decision allows Congress to require public libraries to install pornography filters on all computers with Internet access as a condition of receiving E-rate funding or grants for computer-related purchases.

The Supreme Court may review its decision if libraries are unable to quickly disable filters or unblock sites at the request of adult library users and thereby restrict users' right to view constitutionally protected material.

***Decision appears to narrow the definition of a public forum***

Perhaps the greatest significance of this decision lies in Chief Justice Rehnquist's plurality opinion that public libraries are not a public forum for Web publishers (or book authors) to speak and are not surrogates for their users' First Amendment interests. Instead, libraries facilitate users' access to research and educational materials. The Court characterized libraries' decisions to install filters as a decision about collecting suitable and worthwhile materials, and not a decision about removing materials. Continuing the parallel with traditional library activities, Rehnquist wrote that "public libraries have traditionally excluded pornographic materials from their other collections [and] Congress could reasonably impose a parallel limitation on its Internet assistance programs."

The Court found that by allowing libraries to disable filters or unblock sites at users' request, CIPA protects the First Amendment rights of adult library users and neutralizes filter-related problems of blocking protected speech. As a result, strict scrutiny under the First Amendment, which requires government to show that a limitation serves a compelling state interest, and the limitation is narrowly drawn to achieve that interest, does not apply. This decision appears to narrow the definition of public forum, leaving fewer circumstances where the government must demonstrate a compelling interest before it restricts individuals' speech.

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