BOWDLER'S LEGACY:

CONGRESS, THE SUPREME COURT
AND INTERNET CENSORSHIP
IN RHODE ISLAND PUBLIC LIBRARIES

A REPORT PREPARED BY THE RHODE ISLAND AFFILIATE,
AMERICAN CIVIL LIBERTIES UNION

SEPTEMBER, 2003

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I. Introduction and Summary

Thomas Bowdler was an English editor whose dubious claim to fame was the publication in 1818 of "The Family Shakespeare," a ten volume edition in which, as he put it, "nothing is added to the original text; but those words and expressions are omitted which cannot with propriety be read aloud in a family."[1] From his name we have the word to "bowdlerize," "to expurgate (a book or writing) by omitting or modifying words or passages considered indelicate or offensive."

Bowdler's legacy lives on in the Internet age, in the form of so-called "filtering" or "blocking" software – computer programs that block users' access to Internet sites based on keywords, content or similar methods. As the result of a recent decision by the U.S. Supreme Court, most public libraries will now be required to install blocking software on their Internet terminals with the aim of preventing patrons from viewing "indelicate or offensive" web sites, as determined by the modern-day Bowdlers who manufacture and promote this technology. In this report, the ACLU of Rhode Island reviews the extent of the software's current use in Rhode Island public libraries and urges libraries to adopt practices and policies that will limit the harmful impact of these censoring devices on patrons.

Imagine a global network created, accessed, added to, and developed by people of every conceivable belief and background. That network is, of course, the Internet. It is, without a doubt, the most inclusive, accessible and groundbreaking communication tool of all time. The potential of the Internet is vast, as a tool for communication, education, research, development, entertainment and coalition building. It is a boundless exchange of ideas across distance and culture, economics and ideology. For the potential of the Internet to be fully realized, the ACLU believes that it must remain uncensored. However, a recent U.S. Supreme Court decision, *United States v. American Library Association*, has created an unfortunate exception to that basic principle.

Many people access the Internet in their local public libraries, because, while the Internet may be "free," the computers used to access it are not. On June 23, 2003, the Supreme Court of the United States issued a major ruling addressing the issue of censorship and the Internet in public libraries.[2] Specifically, the Court upheld the constitutionality of a federal law that, as it gets implemented across the country in the next year, will deny both adults and minors access to constitutionally protected speech online in most public libraries.

Widespread censorship will occur as libraries are forced to install flawed "filtering" software that will keep patrons from accessing thousands and thousands of lawful and informative web sites.

The only public libraries that will not be subject to this regimen are those that are both principled and wealthy enough to forego the federal funding to which this mandate is tied. Thus, the "digital divide" that already exists between the "haves" – those who can afford Internet access in the home – and the "have-nots" – low-income people, minorities, and those who live in rural areas where reliable Internet access is not always available – will widen.

In anticipation of the Court's ruling, the ACLU of Rhode Island conducted a survey of public libraries in the state to examine their policies governing "blocking software" and Internet access. The survey was identical to one the Affiliate conducted in 1997, when blocking software was first gaining attention. This report reviews the results of the survey, analyzes the U.S. Supreme Court ruling and its impact for local libraries, and concludes with recommendations designed to limit that impact.

The survey found that public libraries in Rhode Island have readily embraced the information age and have eagerly sought to provide their patrons broad access to the Internet. The number of library computer terminals with Internet access has expanded greatly in the past five years. And, as of last year, most public libraries had rejected the idea of using "blocking software" on their computers. As a result of the Supreme Court decision, however, they will now be required to install this software. Ironically, though, the libraries in the state that were already using blocking software (approximately one in five, according to the survey) will need to revise their practices in order to ensure that their patrons have *greater* access to the Internet. This is one way in which the Supreme Court's decision, while a major First Amendment defeat, leaves the door open to further challenges to the censorship it requires.

The report concludes by describing three non-exclusive approaches available to libraries to minimize the impact of the Court's ruling: choosing software that is most protective of free speech; informing patrons of their options for filter-free Internet use; and facilitating the disabling of blocking software. The ACLU is hopeful that this report will encourage public libraries in Rhode Island to take every possible measure available to provide their patrons with the freest access to the Internet that is allowable under the law.

II. The Child Internet Protection Act (CIPA) and the Court Case

The law at the center of the controversy, the Child Internet Protection Act (or CIPA), requires libraries that receive certain federal funding to install "technology protection measures" on all of their Internet access terminals – even on the terminals accessible only to library staff – in order to bar access to material that is "obscene, child pornography" or "harmful to minors."[3] Congress approved this censorship law even after its own 18-member panel set up to study ways to protect children online rejected the idea because it recognized that "protected, harmless, or innocent speech would be accidentally or inappropriately blocked." Even the makers of the blocking programs touted by the law's proponents do not claim to

block only material that is "obscene, child pornography," or "harmful to minors," the types of websites the law targets.

Shortly after CIPA was enacted, the ACLU, the American Library Association (ALA) and other groups filed suit to challenge the law's constitutionality.[4] One of the plaintiffs in the ACLU suit was a Rhode Island-based website, AfraidToAsk.com, which discusses sensitive health care issues, but which is blocked by one or more of the leading commercial "blocking" programs. The site provides information through its web site about highly personal health care issues, such as sexually transmitted diseases, depression, chronic disease and erectile dysfunction. It also maintains a "bulletin board" on its web site, where users share information on personal health care issues.

The site is run by Jonathan Bertman, M.D., Clinical Assistant Professor of Family Medicine at Brown University with a private practice in Hope Valley. The information and discussions on the site are by their nature frank, and include explicit language and pictures. Dr. Bertman believes that explicitness, both textual and visual, is necessary to the site's mission to provide comprehensive information about the topics it covers. He further believes that many individuals who use the site are adolescents who are either too embarrassed or afraid to discuss issues about their bodies or sexual activities with their parents.

Last year, a three-judge panel in Philadelphia, where the suit was filed, agreed with the ACLU's arguments that so-called "filtering" software cannot effectively screen out only material deemed "harmful to minors."[5] The court held that the law significantly infringed on the First Amendment rights of patrons and of web sites that were inappropriately blocked. The court called the blocking software "a blunt instrument," adding that the problems faced by manufacturers and vendors of that software "are legion." Based on nine days of testimony from librarians, patrons, web publishers and experts, the court supported its ruling striking down the law with over 100 pages of detailed findings of fact, which established that "at least tens of thousands" of web pages are wrongly blocked by "filtering" programs, including web sites for the Knights of Columbus, a Christian orphanage in Honduras and several political candidates. The government appealed that ruling to the U.S. Supreme Court, where the Rhode Island Library Association filed a "friend of the court" brief in support of the ACLU's position.

In a 6-3 ruling, the Supreme Court overturned the lower court decision and upheld the law's constitutionality. However, the decision contained no majority opinion. A four-Justice plurality opinion upholding the law was written by Chief Justice Rehnquist, and joined by Justices O'Connor, Scalia, and Thomas. It primarily rested upon the principle that Congress has wide latitude to attach conditions to the receipt of federal funds in order to further its policy objectives. Justices Souter, Ginsburg and Stevens dissented and adopted the ACLU's position that the federal law unduly interfered with First Amendment rights. Two Justices – Kennedy and Breyer – issued separate opinions in which they voted to uphold the law's constitutionality, but on narrower grounds than the plurality. Their opinions, forming a majority in support of the law, are thus critical to an understanding of the case.

The two concurring justices appeared to recognize that "filtering" software blocks access to a significant amount of constitutionally protected speech. In upholding the law nonetheless,

they adopted a broad interpretation of a provision in CIPA that authorizes libraries to disable the blocking software "for bona fide research or other lawful purposes."[6] The Justices interpreted this provision as essentially allowing adult patrons prompt access to unblocked terminals upon request. In Justice Breyer's words, "the Act allows libraries to permit any adult patron access to an 'overblocked' Web site; the adult patron need only ask a librarian to unblock the specific Web site or, alternatively, ask the librarian, 'Please disable the entire filter.'"[7] In other words, if an adult requests that the filter be disabled, the library must comply without inquiring about the purpose for the request.

In fact, Justice Kennedy explicitly cautioned that "[i]f 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," another challenge to the law's application could be brought.[8] Thus, libraries that refuse to disable filters at the request of an adult patron or that impose substantial burdens on a patron's ability to have the filter disabled risk being sued for violating patrons' First Amendment rights notwithstanding the Court's decision.

As Chris Hansen, a senior staff attorney with the National ACLU, noted, "Although we are disappointed that the Court upheld a law that is unequivocally a form of censorship, there is a silver lining. The Justices essentially rewrote the law to minimize its effect on adult library patrons. That distinction leaves the door open to additional challenges if libraries do not adopt an adequate unblocking system."[9] In addition, Chapter VII of this report discusses a number of suggestions offered by the American Library Association that, if implemented, could significantly limit the adverse impact of the Court's ruling.

III. Blocking Software

The American Civil Liberties Union, the American Library Association and dozens of other organizations that recognize the importance of the Internet as an uncensored medium oppose public library usage of blocking software. This software is used on computers with Internet access to limit the sites that users can visit when they are browsing the World Wide Web.

It is one thing for parents to use this software in the home to limit the information that their children can access while using the Internet. In places like public libraries, however, the restrictions imposed by blocking software are decided not by parents, nor even by librarians, but by third parties – the companies that manufacture the blocking software itself.

As the three-judge federal court concluded in its ruling on the Congressional law, blocking software simply doesn't work very well. Contrary to the federal statute, no blocking technology can block only sites that are "harmful to minors." While the point of the software is to limit users from visiting various kinds of sites based on their content, the software – by the very nature of the technology – both significantly overblocks and underblocks sites.

Ironically, CIPA seeks to bar library patrons' access to visual depictions, but most blocking software largely relies on word and phrase recognition to determine what sites cannot be viewed. As a result of the technology's dependence on text, the most innocuous sites can – and often do – find themselves blocked. In one of the more ironic examples, former House Majority Leader Dick Armey's site was blocked by some software because of his first name! Just as famously, software blocked users' access to sites providing information about Super Bowl XXX because of the triple-x in its title.

Among the many sites that the trial court specifically found were wrongfully blocked by one or more of the leading software packages were: the web page of the Republican National Committee, a site teaching piano playing, and a juggling site. The overblocking is especially harmful for sites like afraidtoask.com, which provide medical information. Software that attempts to block "pornographic" sites by looking for the word "breast" cannot distinguish between a site for Penthouse Magazine or one discussing breast cancer. The software programs also are designed to block many other categories of sites besides the "pornographic." For example, sites can be blocked for being "tasteless" or involving "gambling." The overblocking that occurs when these categories are used is easily imaginable.

Furthermore, all of the blocking programs inevitably *underblock* due to the same inherent technological problems that lead to overblocking. For example, since much blocking is text-based, the software may fail to block sites with "obscene" pictures that have no text suggesting it was that type of site. The rapid rate of Internet growth further makes it impossible for any software program – whether relying on computers, human researchers or a combination of the two – to weed out or block all, or anything close to all, "inappropriate" sites, whatever criteria are used.

At bottom, the programs simply do not provide any security for those wishing to keeping out of reach web sites that are "harmful to minors." At the same time, however, they prevent access to many important and educational sites that minors – and adults -- should have every right to visit. In essence, since the law requires libraries to use blocking software on all of their computer terminals, adult patrons are reduced to viewing only what private companies deem is acceptable for children to view!

IV. The Survey of Rhode Island Libraries

In light of the importance of the First Amendment issues raised by Internet censorship at public libraries, the ACLU of Rhode Island conducted two identical surveys to investigate the use of blocking software in Rhode Island libraries, first in 1997, and then again in 2002. The surveys included questions about the type and extent of Internet services available in the library, the presence of blocking software on terminals with Internet access, and employment of other restriction methods. The ACLU also reviewed the Internet policies of libraries, searching for trends and information about blocking systems and other ways the libraries restricted access. We also asked library professionals to share their views about Internet blocking software. We have summarized some of those findings in the following pages in order to assist professionals, educators and library patrons in learning more about blocking software and how it is used in the community. We also provide recommendations

on how libraries can minimize the consequences of the Supreme Court ruling on their patrons' ability to access lawful material on the Internet.

The evidence is clear that blocking software is woefully ineffective. As the survey demonstrates, most public libraries in Rhode Island recognize that fact and also understand the importance of an uncensored Internet to better fulfill their educational mission. The ACLU is hopeful that libraries now forced by the court ruling to make use of the flawed software will revise their policies and practices to limit the ruling's impact in ways suggested later in this report. The ACLU also expects that those libraries that were already blocking patrons' access will revise their policies to reflect both the more appropriate role that libraries should play in the age of the Internet and the limits the Supreme Court ruling now places on "filtered" library terminal policies. In short, libraries must continue to provide patrons with increased access to information upon request, rather than allow flawed technology to automatically limit access to this important medium.

V. Internet Access

Our survey found, not unexpectedly, that the availability of Internet access in Rhode Island libraries increased significantly between 1997 and 2002.

The Internet has become the norm in our schools and workplaces and, indeed, has even made its way into our coffee shops. It is no surprise, then, that the greatest method of knowledge dissemination ever known has become a common presence in our libraries, assisting our storehouses of knowledge and learning in providing even more comprehensive services and access to information. In fact, many libraries now utilize the Internet to organize their card catalogues, making library usage more convenient and efficient for both patrons and library personnel.

In 1997, 22 of the 29 libraries that responded to our survey had Internet access. In 2002, all 39 of the libraries that responded to the survey provided Internet access for patrons. Likewise, the average number of stations per library more than doubled, from 4.97 in 1997 to 12.18 in 2002.

Average number of Internet stations in public libraries

15

12.18

10

4.97

5

0

1997   2002

VI. Software Use in Rhode Island Libraries

The ACLU's survey of public libraries in the state found that close to one of every four libraries was using blocking software prior to the Supreme Court ruling. (Implementation of the law had been stayed until the U.S. Supreme Court issued its decision in June.) While the percentage of libraries blocking computer use was thus far less than a majority, libraries in
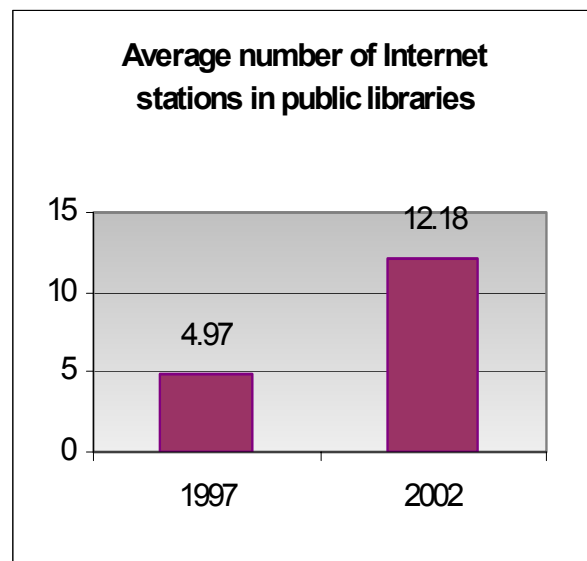
three of the state's larger cities – Cranston, Pawtucket and Warwick – were among the communities doing so.

The two popular commercial blocking programs that our survey found in use in Rhode Island libraries -- WebSense and Cyber Patrol – are no exception to the "overblocking" problems mentioned above. They make it impossible for an Internet user to view many legitimate sites. Their flaws were documented in the federal court case. One of the more informative anti-blocking sites on the Web, www.peacefire.org, provides more specific details about the flaws in these two programs (and similar commercial software).

Cyber Patrol claims that its list of "inappropriate" sites "has been compiled by a team of professional researchers which . . . has reviewed more than one million Web pages." But Peacefire found that, among the many sites blocked by the software at one time or another, were sites for "Amnesty International Israel" and "Lloyd Doggett for Congress." In a test of the first 1,000 dot.com domain names in an alphabetical list, Peacefire found that 81% of the sites blocked were errors.[10]

WebSense fares no better. In a test conducted in November, 2001 by Peacefire, sites such as the Navarra, Spain chapter of the Red Cross, Keep Nagadoches Beautiful, the Pro-Choice Resource Center and the Jewish Federation of Northeastern Pennsylvania were all blocked as "sex" sites.[11] A Holocaust remembrance page was blocked as "racism/hate," a religious ministry organization site was blocked as "tasteless," and an on-line information resource about disability issues was blocked as "gambling."[12]

Percent of Internet-capable libraries with filtering programs
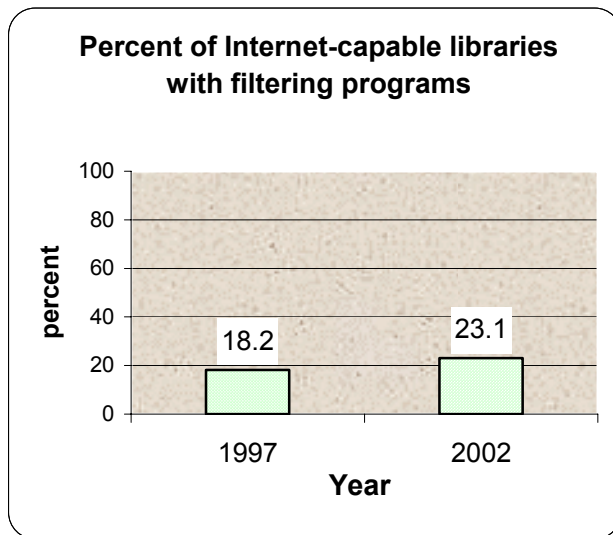
Despite those significant flaws, a not insubstantial number of libraries in Rhode Island – nine out of 38 responding – were using blocking software even before the Supreme Court's ruling. Further, the majority of libraries that were using WebSense or Cyber Patrol did not limit the censorship to computer terminals accessed by children, but instead censored all of their computers.

Different reasons were given by libraries as to why they did, or did not, install blocking software on their public computer terminals.

Sometimes blocking software was installed in response to "unsuitable" uses of the Internet by patrons. This is exemplified by the Coventry Public Library's decision to install software because of "inappropriate use of Internet, especially in Children's Room." At Greenville Public Library, the decision to filter was made due to requests from staff and patrons.

At Cranston Public Library, "many patrons routinely visited [offensive] sites and often left the computer without exiting the offensive screens. Privacy screens on each station designed to

protect both the user and the unwitting passerby were insufficient in their ability to hide the graphic exhibition of these 'unfortunate' sites. It became necessary for staff to escort each new user to the computer stations in order to clear any open windows. The employment of WebSense has allowed us to... ensure a less sexually hostile workplace for our staff."

These responses all indicate a desire to "protect" patrons and staff from the harm of viewing "inappropriate" sites. In the process of doing so, however, library personnel were allowing private for-profit companies – and their deeply flawed software – to make decisions about what is and is not offensive, and significantly affecting the ability of patrons to view legitimate sites.

A few libraries specifically based the decision to install blocking software on their material selection policies. For example, the director of the Jamestown Philomenian Library stated: "Public libraries have never provided access to any & all information -- we choose based on community standards and interest."

However, the narrow range of information that most libraries provide to patrons is usually due to limited assets rather than to a resolve to keep selected materials out of the reach of the public. If a library had just bought a new set of encyclopedias, personnel would not go through them and cut out "offensive" passages. Even if libraries make choices, due to limited resources, based on "community standards," a primary mission is to give patrons access to information by other means – such as interlibrary loans – when it is not available at the particular location.

TABLE OF LIBRARIES USING BLOCKING SOFTWARE IN 1997 AND/OR 2002

	Name of library	Software used	Which computers are filtered?
1997	North Kingstown Free Library	Cyber Patrol	children's only
	North Smithfield Public Library	Unknown	all computers
	South Kingstown Public Library	Cyber Patrol	all computers
	Warwick Public Library	Cyber Patrol	all except staff
2002	Coventry Public Library	WebSense	all computers
	Cranston Public Library	WebSense	all computers
	Greenville Public Library	WebSense	children's only
	Island Free Library	Unknown	unknown
	Jamestown Philomenian Library	WebSense	all except one in adult section
	Narragansett Public Library	Cyber Patrol	children's only
	North Kingstown Free Library	Cyber Patrol	children's only
	Pawtucket Public Library	WebSense	all except staff
	Warwick Public Library	WebSense	all computers

Most importantly, though, is that the professional decisions made by librarians as to what books or magazines to purchase are made by professionals. By using blocking software, librarians are delegating their responsibility to for-profit businesses that have no knowledge of a library's own community standards. A method of accessing infinitely more material and information with limited financial output should be cause for celebration, not censorship. In the words of Cumberland Public Library personnel, "Some information accessed electronically may not meet a library's selection or collection development policy. It is, therefore, left to each user to determine what is appropriate."

Pawtucket Public Library introduced software after a "tap on the shoulder" technique failed to work. Pawtucket explained that "the tap on the shoulder method is hard to enforce even handedly. What is inappropriate to one staff member may not be inappropriate to another." The library failed to consider that software is even more arbitrary and unfair, and results in private companies withdrawing from library patrons access to thousands of important and legitimate sites.

Warwick Public Library claimed to install software to minimize personal use of computers, freeing them for "library-related" purposes such as research. Of course, software that blocks sites like afraidtoask.com impedes, rather than furthers, research.

These filters vary in what they block and how well they block it. As noted above, many of the categories that can be chosen for "filtering" are extremely subjective. "Adult content," for example, is defined differently depending on the person defining it. Vocabulary-based blocking mechanisms also filter out certain words as indicative of "adult content" and therefore block sites that include medical terminology or other valuable information. A block on nudity could block out images of much of the world's most treasured art, as well as sites like Save the Children or Amnesty International.

Libraries in Rhode Island using the software had very different policies on the types of sites that they programmed the software to block.

- At Warwick Public Library, the "explicit sex" and "illegal" categories are blocked.
- In Pawtucket Public Library, websites containing "adult content," "sex," "gambling," and "games" are blocked on all patron computers. In addition, "personals" and "dating" are blocked on children's computers.
- Jamestown Philomenian Library's WebSense blocking software restricts "chat," "non-educational games," "obscenity," "pornography," and "child pornography."
- In addition to "sex" and "gambling," Coventry Public Library blocks "tasteless" sites.
- Cranston Public Library blocks "adult content," "nudity," and "sex" categories.
- Greenville Public Library restricts "graphic" sexual images.
- Narragansett Public Library uses Cyber Patrol to block "pornography" and "language."

On the other hand, the vast majority of public libraries forthrightly and appropriately rejected the use of blocking software as incompatible with their mission. For example, North Smithfield and South Kingstown Public Libraries used blocking in 1997 but had stopped by 2002. South Kingstown's Internet policy gives the reason for their decision: "As stated in

the American Library Association's *Resolution on the Use of Filtering Software* (adopted by the S.K. Public Library Board of Trustees September 2002) 'the use of filtering software by libraries to block access to constitutionally protected speech violates the Library Bill of Rights;' therefore, the South Kingstown Public Library will not impose blocking or filtering software to limit access to Internet sites."

The Cumberland Public Library's Policy read: "The authority to determine what is illegal (obscene) content rests with the Rhode Island Attorney General. Since the courts have recently ruled that filtering software blocks access to constitutionally protected speech, the Cumberland Public Library will not impose filtering software to limit access to Internet sites."

Similarly, East Providence came to the conclusion that the benefits afforded by unrestricted Internet usage far outweigh any of the potential problems created by patrons becoming offended by someone else's choices. The library's policy affirmed its decision to make all sites available: "We firmly believe that the valuable information and interaction available on the worldwide network far outweighs the possibility that users may come across material that is inconsistent with the goals of the library."

Some libraries relied on methods less sweeping than blocking software to restrict the viewing of "offensive" materials. North Smithfield Public Library used a self-described "evil eye" to deter "inappropriate material," while Central Falls Public Library employed a full time computer lab monitor. A number of libraries included in their policies rules against viewing "offensive," "objectionable," and "inappropriate" material, as decided by staff members or other patrons.

Some libraries' reasons for using blocking software to forbid access to "objectionable" material included concerns about public disruptions that might come from viewing graphic sites. However, Edward Surato of George Hail Public Library resolved this concern by applying the same rules to the Internet as are already applied to other library resources. Surato explained, "Like any other patron issue we are concerned with disruptive behavior. If one is loud, abusive, vulgar, etc, we ask that they be considerate of others. If a patron is not a disruptive presence on the Internet, I don't care what they are doing."

Like George Hail, many libraries that chose not to employ blocking software established creative, content-neutral guidelines to minimize problems with the Internet. However, what works for one library might not always work for others. For example, Essex Public Library found privacy screens to be effective whereas Cranston Public Library did not. Some libraries found that placing computers in a high-traffic area reduces problems due to fear of "public embarrassment," while others found that it makes the problem worse because other patrons are offended by chance viewing of sites.

Of course, public libraries eschewing blocking software still took steps to help patrons use the Internet wisely. In a more pro-active vein, many libraries posted a list of links available if users wished to stay within the library's collection guidelines. Others provided Internet safety and information courses for children and adults. A few libraries would not specifically prevent a patron from viewing a site, but instead asked the patron to come back when he or she would not offend other users. Some required parental permission for children to use the

Internet terminals (See Appendix A.) Most libraries had content-neutral time limits to ensure all users have an equal chance to use the Internet.

In short, the bottom line was that libraries that rejected blocking software were able to find solutions that protected free speech while minimizing disturbances and helping patrons avoid unwelcome sites. The ACLU commends those libraries for keeping censorship technology out of their buildings. In light of the Supreme Court's ruling, however, new solutions must be adopted.

VII. Solutions Post-*United States v. American Library Association*

On July 23, 2003, the Federal Communications Commission, charged with enforcing CIPA, issued an order in response to the court ruling in *United States v. American Library Association*. Pursuant to that order, libraries are required to "undertake efforts" this fiscal year and be fully compliant with CIPA by July 1, 2004 in order to receive the federal funding tied to the Act.[13]

Some libraries around the country have indicated that they will give up their receipt of federal funding in order to avoid CIPA's mandate that they place blocking software on their Internet computers. But this is a choice that few public libraries can afford. What then can libraries do to minimize the negative effects of the Court ruling?

There are actually a number of approaches that libraries can take. The suggestions that follow below are largely taken from recommendations of the American Library Association. While these recommendations appear to comport with the law and the Supreme Court's decision, the ALA cautions that they remain untested in the courts and before the FCC.

The efforts to minimize the impact of the Court's ruling fall into three non-exclusive approaches: choosing software most protective of free speech; informing patrons of their options for filter-free Internet use; and facilitating the disabling of blocking software.

1. Choice of Software

As the ALA advised its members: "There is no obligation to use any particular filter in the library. The statute and regulations require only that certifying libraries use a 'technology protection measure' that 'protects against access' to Internet materials that are obscene, child pornography, and, during use by minors under 17 years-old, 'harmful to minors.' Because the inherent flaws of blocking software make it impossible to ensure that these materials are filtered, a library will be deemed CIPA-compliant as long as it makes a 'good faith' effort to block these categories of online materials. Libraries, therefore, have some flexibility in selecting, crafting, and modifying the required filtering technology to meet CIPA's blocking and disabling requirements."[14]

It will be up to concerned libraries to carefully investigate the various blocking software programs on the market and find one that is least likely to block legitimate sites. As

mentioned previously, the nature of the technology is such that this will necessarily mean simply choosing the lesser of many evils.

The libraries have another important tool at their disposal. By limiting the "categories" of sites that will be blocked by the software, which the popular programs allow, libraries will go a long way to ensuring freer access to the Internet. Nothing in CIPA requires libraries to block sites that are, for example, "tasteless." By keeping such sites unblocked, the library is not just making the Internet more accessible for its patrons generally, it is preventing software companies from hindering patrons' access to specific sites that their very flawed technology improperly limits.

2. Inform the Public

One useful way that a library can limit the impact of the Court decision is to advise patrons of the Act and of the rights that the Supreme Court ruling has given them to request unblocking. The ALA recommends the following pro-active approach, which the Affiliate endorses:

"CIPA-compliant libraries can and should post signs - either in hard copy (at the entrance to the library, near the Internet terminals, etc.) and/or electronically, on the computer screens - informing patrons that:

-- Because this library receives federal funding for public Internet access, federal law requires the library to install blocking software on the library's Internet terminals;

-- The blocking software, or filter, is inherently imprecise and flawed. It inevitably will block access to a vast array of constitutionally protected material on the Internet. Because of its technological limitations, the filter is also incapable of protecting against access to Internet material that is obscene, child pornography, or harmful to minors;

-- Under the law, the library can unblock individual websites that have been blocked erroneously by the filter. In addition, the library will disable the entire filter for adult patrons 17 and over upon request. The requesting patron will not have to explain why he or she is asking that the site be unblocked or that the entire filter be turned-off. The library encourages patrons to request that the filter be disabled."[15]

3. Facilitate Disabling of the Filter

Unfortunately, providing patrons with information about their rights to a filter-free Internet experience only goes so far. Many patrons will undoubtedly still feel uncomfortable or embarrassed in making such a request, no matter how encouraging the library may be. Therefore, procedures that facilitate disabling of the filters are an important additional step. Library protocols that make it easier for patrons to request disabling of "filters" both promote broad access to the Internet and ensure library compliance with the court opinion regarding patrons' rights. The ALA specifically recommends the following, which we support:

"Libraries should take steps to facilitate the disabling of Internet blocking software upon request by adult patrons. The following options can help ease administrative burdens on libraries and may mitigate any stigma associated with patron requests to disable the filters.

-- A library can post signs containing the information described above. The signs should encourage adult patrons to request disabling of the library's filtering software, and should make clear that the library will not inquire into the patron's purpose in seeking unfiltered access.

-- A library can segregate computers for unfiltered Internet access by adults. Adults wishing to use those computers would sign a form, display identification, etc., indicating that (1) the patron is 17 and over, and (2) the patron seeks unfiltered Internet access 'for lawful purposes.' The library would be responsible for ensuring that only adults gain access to these Internet terminals.

-- The library can adopt a so-called 'smart card' system, under which patrons use a plastic card (similar to a credit card or library card) to gain access to the Internet from library terminals. Each card automatically would indicate whether the patron is an adult. The Internet terminals could then offer adult patrons the option of Internet access with the filter enabled or disabled. The library's 'welcome' screen could ask the adult patron whether he or she wanted filtered Internet access (presumably accompanied by a message explaining the inherent flaws of blocking software). If the patron selects unfiltered access, the next screen could include a message stating: 'Click here if you wish the library to disable the entire filter during your Internet session. By clicking on this box, you declare that you will use the Internet for lawful purposes.' Upon the patron's assent, the terminal could provide unfiltered Internet access."[16]

A combination of these approaches can go a long way in minimizing the damage that the federal law inflicts on libraries.

VIII. Conclusion

The spread of the Internet in our society and the inauguration of the so-called "information age" have raised some hard questions about the intersections of privacy, freedom of speech and personal mores. The Internet has a boundless amount of information for the taking. Our libraries, as public storehouses of knowledge, are a natural place for the Internet, as it expands the public's ability to learn and communicate with people halfway around the globe.

The ACLU agrees with the dissenting Justices in *United States v. American Library Association* that the use of blocking software on Internet terminals in public libraries is unconstitutional. We believe that it illegally chills free speech and arbitrarily controls the ability of people who must go to the library for their Internet access -- because they cannot afford a personal computer or for other reasons -- to retrieve the same information as everyone else. Making the Internet available in public libraries is a wonderful first step to

making information available across socio-economic lines, but it cheapens the effort when the information is censored.

The ACLU commends the many libraries in Rhode Island that supported the American Library Association's *Library Bill of Rights* and allowed their patrons free access to the Internet prior to the Supreme Court's ruling in June. The majority of Rhode Island libraries did provide uncensored Internet access, and none of them reported insurmountable obstacles associated with it. These libraries well fulfilled their role by giving citizens free access to all accessible information in an unbiased context.

Unfortunately, some libraries took it upon themselves to decide what ideas their patrons should and should not have access to. The libraries in three of Rhode Island's major cities -- Cranston, Warwick, and Pawtucket -- did not offer unfiltered computer access. Patrons of these libraries were prevented from seeing information they might need, because of the possibility that someone might be offended. The ACLU will be urging these libraries in particular, and all other libraries that have enforced restrictions on Internet access, to uphold the First Amendment principles that underlie both their very mission and the concurring opinions of the Supreme Court in upholding the constitutionality of CIPA. Failure to do so is not only an undermining of the library's mission; it is potentially unconstitutional as well.

The American Library Association has proposed a series of well-conceived recommendations to address the Court decision. We urge their adoption by libraries across the state. Of course, these recommendations cannot completely erase the impact of the Court's decision on basic "free speech" principles; after all, every library receiving federal funds will now be forced to purchase and install a censoring device. This is a mandate as antithetical to a library's mission as any mandate could be. The adoption of wise policies can nonetheless help greatly in mitigating the effects of this compelled censorship.

In the meantime, the ACLU will continue to monitor the situation and will encourage library patrons to demand unfettered access to the Internet.[17]

Appendix A: Minors & the Internet

In its survey, the ACLU asked local librarians to express their views on minors' access to the Internet and explain any special policies they had on the subject. This appendix briefly summarizes the responses we received to these questions in our survey.
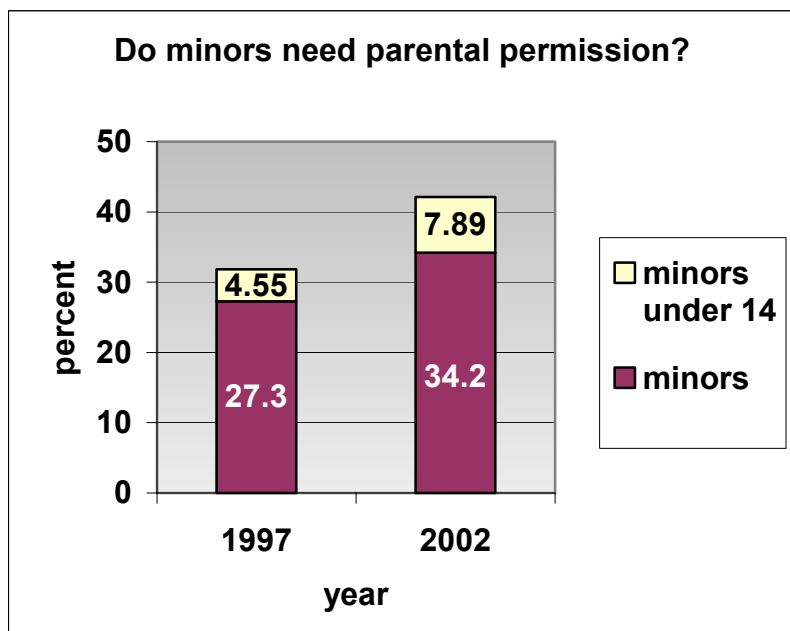
Survey respondents were asked an optional opinion question: "Do you agree or disagree that minors should have unrestricted access to the Internet at public libraries?"

Should minors have unrestricted internet access in public libraries?

Legend: no answer, no, yes

	1997	2002
no answer	31.82	53.85
no	18.18	10.26
yes	50.00	35.90

Percnt (y-axis: 0–100), Year (x-axis)

Because so many chose not to answer this question, it is difficult to determine if the data represents a true shift of opinion or not. What is most significant, however, is the decrease of respondents willing to speak out on the subject at all – perhaps, in and of itself, a chilling of speech due to fear of public opinion.
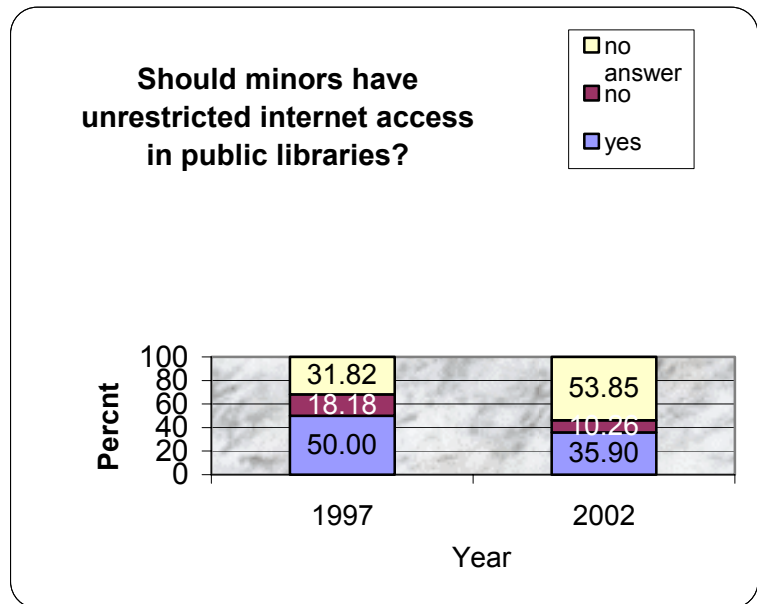
Individual libraries varied in their attitudes and policies toward minors. For example, the Director of the Foster Public Library believed no restrictions should be placed on Internet use, reasoning that minors "aren't restricted from looking at any books in the library."

In contrast, the Central Falls Free Public Library adopts quite a different outlook, placing the library in the role of a parent rather than an unbiased provider of information to the community:

Do minors need parental permission?

Legend: minors under 14, minors

	1997	2002
minors under 14	4.55	7.89
minors	27.3	34.2

percent (y-axis: 0–50), year (x-axis)

"Often times minors are forced to relinquish rights for what is perceived as the greater good, one example being locker searches in schools. Many libraries operate *in loco parentis*,

especially those libraries in poor neighborhoods. The abundance of 'negative' images and information on the Web could be very detrimental to minors. Therefore, I believe that libraries should restrict minors and adults from viewing certain sites on the web."

The American Library Association, like the ACLU, has for decades rejected such a paternalistic view of the library's role. Fortunately, many libraries acknowledge that they do not act *in loco parentis*, and instead delegate any responsibility over what children view to the parents.

For example, Cross' Mills Library in Charlestown had a Public Policy which read, "By taking responsibility for your children's online computer use, parents can greatly minimize any potential risks of being online… If you do not want your child accessing the Internet then it is up to you to let them know. The library staff will not oversee what *anyone* searches online."

Cumberland Public Library advised, "Parents and legal guardians who are concerned about their children's use of electronic resources should provide guidance to their own children."

East Greenwich Free Library posted a disclaimer: "It is impossible for the library staff to control the content of material on the Internet. Therefore: Parents or guardians, NOT the library or its staff, are responsible for the Internet information selected and/or accessed by their minor children."

The Barrington Public Library required minors to obtain written permission to access the Internet in 1997, but had done away with that requirement by 2002. This is not the norm, though. As the graph shows, a greater percentage of libraries do require parental consent for minors to use the Internet.

Appendix B: Index of Participating Libraries

Ashaway Free Library (02)
Barrington Public Library ***
Brownell Library ***
Central Falls Free Public Library ***
Clark Memorial Library ***
Coventry Public Library ***
Cranston Public Library ***
Cross Mills Public Library ***
Cumberland Public Library ***
Davisville Free Library (02)
East Greenwich Free Library ***
East Providence Public Library ***
East Smithfield Public Library (02)
Essex Public Library (97)
Foster Public Library (97)
George Hail Free Library (02)
Glocester Manton Free Public Library ***
Greenville Public Library ***
Harmony Library (02)
Hope Library (02)
Island Free Library (02)
Jamestown Philomenian Library ***
Jesse M. Smith Memorial Library (02)
Langworthy Public Library (02)
Lincoln Public Library ***
Louttit Library (02)
Marian J. Mohr Memorial Library (02)
Middletown Public Library (02)
Narragansett Public Library (02)
Newport Public Library ***
North Kingstown Free Library ***
North Scituate Public Library ***
North Smithfield Public Library ***
Pawtucket Public Library ***
Portsmouth Free Public Library (02)
Providence Public Library ***
Rogers Free Library (02)
South Kingstown Public Library ***
Tiverton Library Services (02)
Warwick Public Library ***
West Warwick Public Library (97)
Westerly Public Library (02)

(97)   Only Participated in the 1997 Survey
(02)   Only Participated in the 2002 Survey
***   Participated in both 1997 and 2002

Footnotes

[1] http://21.1911encyclopedia.org/B/BO/BOWDLER_THOMAS.htm

[2] *United States v. American Library Association*, 123 S.Ct. 2297, 71 U.S.L.W. 4465 (2003).

[3] Public Law 106-554.

[4] Two suits were actually filed, *American Library Association v. U.S.* and *Multnomah County Public Library v. U.S.* The latter case was filed by the ACLU. The two cases were consolidated at trial and for purposes of the appeal.

[5] 201 F.Supp.2d 401 (E.D. Pa. 2002).

[6] 20 U.S.C. §9134(f)(3); 47 U.S.C. §254(h)(6)(D).

[7] 71 U.S.L.W. 4473.

[8] 71 U.S.L.W. 4471.

[9] http://www.internetnews.com/bus-news/article.php/2226571

[10] http://www.peacefire.org/censorware/Cyber_Patrol

[11] http://www.peacefire.org/censorware/WebSENSE

[12] Id.

[13] In the Matter of Federal-State Joint Board on Universal Service – Children's Internet Protection Act, CC Docket No. 96-45, Federal Communications Commission, FCC 03-188, July 23, 2003.

[14] http://www.ala.org/Content/NavigationMenu/Our_Association/Offices/ALA_Washington/Issues2/Civil_Liberties,_Intellectual_Freedom,_Privacy/CIPA1/legalfaq.htm

[15] Id.

[16] Id.

[17] This report was prepared with the assistance of ACLU intern Angela Waddell and Assistant to the Director Bridget Longridge.