

**READER'S BLOCK:
INTERNET CENSORSHIP
IN RHODE ISLAND PUBLIC LIBRARIES**

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

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I. INTRODUCTION AND SUMMARY

“The public library has been historically a vital instrument of democracy and opportunity in the United States.... Our history has been greatly shaped by people who read their way to opportunity and achievements in public libraries.” – Arthur M. Schlesinger

“Quite simply one can smell a rat when a library blocks material already in its control, just as we do when a library removes books from its shelves for reasons having nothing to do with wear and tear, obsolescence or lack of demand.” – U.S. Supreme Court Justice David Souter

The mission of the public library always has been, in the most basic sense, to provide the public with access to a broad range of information. The Internet has expanded exponentially the ability of libraries to fulfill that mission. Ironically, however, this new medium has ushered in a new wave of censorship that seriously undermines the public library’s long-understood role in the community.

For eight years, the ACLU in Rhode Island has been studying public library response in the state to the introduction of the Internet as an information tool. On one level, it is clear that libraries have wholeheartedly embraced it; computers hooked up to the Internet for patrons’ use are ubiquitous in the library setting. But on another much more troubling level, libraries have concomitantly taken on a new role: that of censor.

This is due, in part, to a federal law that took effect last year, the Children’s Internet Protection Act (CIPA). CIPA requires libraries that want to continue to receive federal funding to employ technology that blocks a wide range of information from being accessed over the Internet. But a new survey conducted by the ACLU shows that public libraries in Rhode Island are, in some

respects, going beyond the federal law’s mandates, and inappropriately discouraging or barring patron access to constitutionally protected material. Among the troubling findings:

▶ *Even though the federal law requires Internet blocking only of certain categories of “inappropriate” visual depictions – “obscenity,” child pornography, and (in the case of minors under 17) material “harmful to minors” – some libraries have gone beyond this obligation, choosing to censor other types of material as well.*

▶ *The state-wide consortium of libraries that is responsible for determining the minimum standards necessary for libraries to comply with the federal law has taken an unnecessarily expansive view of those standards, thereby denying adults access to constitutionally protected information.*

▶ *The consortium has also provided public libraries with confusing, and sometimes contradictory, information about the federal law’s requirements and the “blocking” technology that has been installed on computers, leaving many librarians themselves perplexed by the new system.*

▶ *A number of libraries in the state have done little to make patrons aware of their legal right to gain access to information wrongly blocked by the deeply flawed “filtering” software (more accurately called “blocking” software) now in use.*

▶ *Perhaps the most widely used public library in the state – the Providence Public Library’s main branch – routinely denies adults access to any material that is blocked by filtering software, in contravention of its own policy and the First Amendment rights of patrons.*

II. BACKGROUND

This report makes a series of recommendations calling for a reversal of all the policies and practices that have led to the creation and institution of the problems above.

When the federal law requiring public library censorship of the Internet took effect last year, the ACLU did not expect to see waves of civil disobedience by librarians across the state upset at this blatant distortion of their role. But we also did not expect to see what has actually happened – a generally docile response that, rather than try to limit the reach of the law, has denied patrons access to information that they have a right to view.

In effect, libraries have inadvertently or sometimes voluntarily *expanded their role as censors*, and have placed in the hands of private commercial businesses – the companies that make “blocking software” for computers – the monopolistic ability to decide what patrons may and may not view.

The unnecessary blocking of Internet material by public libraries only exacerbates the so-called digital divide in this country between those who have easy personal access to the Internet, and those who must rely on their local library for this access.

We are hopeful that, through this report, public libraries will reassess the policies and practices they have implemented and will restore patron access to library material to what it should be. Otherwise, we fear, the quintessential role of the public library – as a purveyor, not censor, of information – will be deeply tarnished.

July 1, 2004 brought a major shift in the way Rhode Island residents obtain information at their public libraries. The day marked the deadline for libraries to comply with the Children’s Internet Protection Act (CIPA), a controversial law requiring any school or library that receives federal funding for Internet services to install computer filters in order to block users’ access to various types of material.

Specifically, CIPA requires libraries to use a “technology protection measure” that blocks visual depictions of “obscene [material], child pornography,” and – in the case of minors under 17 – material “harmful to minors” on all computers connected to the Internet.¹ And so, last year, Rhode Island’s library network activated a state-wide blocking system, preserving crucial funding, but in the process limiting access to a vast amount of information for thousands of public library patrons.

Although Congress passed CIPA in 2001, subsequent legal challenges had delayed its adoption. A federal court in Philadelphia quickly responded to a challenge to the Act filed by the American Civil Liberties Union, the American Library Association and other groups by declaring the law unconstitutional. The decision found that the statute posed serious threats to free speech. Because the filters block material that is protected for adult viewing under the First Amendment, the court ruled that the law tramples on adult computer users’ rights.

The court also noted that blocking technology is severely flawed, with both “overblocking” of acceptable sites and “underblocking” of forbidden sites quite prevalent. Testimony pointed to erroneously blocked sites on topics such as breast cancer, orphanages, political groups, and the

III. A SURVEY OF RHODE ISLAND LIBRARY PRACTICES

Holocaust. Conversely, because the filters are text-based, explicit sites that contain no “trigger” words often escape detection and blocking. The federal court thus rejected what it labeled a “blunt instrument.”²

However, CIPA fared better in the U.S. Supreme Court. On June 23, 2003, the Court reversed the lower court’s ruling in a 6 to 3 decision.³ In a plurality opinion, Chief Justice Rehnquist, joined by Justices O’Connor, Scalia, and Thomas, found CIPA to be constitutional largely on the theory that Congress is allowed to use funding to promote its policies, even if those policies might be unconstitutional if directly imposed without monetary strings.

Justices Souter, Ginsberg, and Stevens dissented, agreeing with the lower court’s view that the Act violated the First Amendment rights of library patrons.

The remaining two Justices – Kennedy and Breyer – upheld the Act, but wrote separate opinions that emphasized a narrow reading of the law in order to limit its impact on library users.

In upholding the law’s constitutionality, the Chief Justice’s opinion, as well as those of the two swing justices, focused on a provision within the Act that allows adults to ask that the blocking software be turned off “for bona fide research or other lawful purposes.”⁴ This option, wrote these justices, was crucial in allowing the law to pass constitutional muster. As will be seen, the court opinions interpreted that provision quite broadly in order to mitigate the constitutional objections to the statute.

The federal government then gave libraries until July 1, 2004 to begin filtering in time for the next federal funding cycle.

To assess CIPA’s impact, the Rhode Island Affiliate of the American Civil Liberties Union sent a survey to each of the state’s 48 public library systems in early June of 2004, just prior to the CIPA compliance deadline. Twenty-nine libraries responded.

The Affiliate then sent a follow-up survey in December of 2004, five months after the start of mandatory Internet blocking. Again, twenty-nine libraries responded (27 of the June respondents plus two that did not respond to the June survey). Data – partial or complete – were thus obtained from 31 libraries.

The 2004 study was the third completed by the Rhode Island ACLU on this topic. Similar surveys sent in 1997 and 2002 solicited information about libraries’ computer facilities, usage, policies, and filtering. Based on those surveys, the Affiliate issued a report in August 2003 that analyzed the survey results as well as the Supreme Court ruling, and offered a number of recommendations for libraries to follow in order to minimize the harm to library patrons’ rights that the filtering law might otherwise cause.⁵

This eight year period saw significant changes in patterns of Internet use at the public libraries. The surveys show that in 1997, of 29 responding libraries, 22 offered Internet access, with an average of just 5 online terminals. By 2002, all of the respondents offered Internet access to patrons, averaging 12 terminals per library.

By early 2004 (before CIPA compliance was mandated), almost one-quarter of the state’s public libraries responding to the survey were voluntarily using blocking software on their computers. However, most

libraries opposed filters, with many stating so in their official policies. Among them were North Smithfield and South Kingstown – two libraries that had used filters in 1997. Both had subsequently stopped. South Kingstown even modified its Internet policy to include a statement from the American Library Association that “the use of filtering software by libraries to block access to constitutionally protected speech violates the Library Bill of Rights.”

Despite the broad opposition, all libraries began filtering on July 1, 2004 as a condition of receiving federal funds.

This state-wide transition was done under the auspices of the Cooperating Libraries Automated Network (CLAN). CLAN is the non-profit consortium that runs a single automation system for all Rhode Island public libraries. CLAN manages the state-wide circulation system, the online catalogue, the interlibrary loan program, and all library telecommunications services.

As such, CLAN is responsible for providing Internet access to each member library, and plays a central role in compliance with CIPA. All member libraries now use blocking software.

According to CLAN’s executive director, Virginia Moses, filtering had been a contentious issue with the directors of member libraries prior to its adoption.

In theory, according to Ms. Moses, each director was free to decide independently whether to adopt a filter. CLAN had decided to contract with Websense, one of several major filter providers, and was offering to install and implement the blocking systems at each library to give them an easy and convenient way to comply with CIPA. Each library that signed up paid for the service through a surcharge included in their CLAN

member fee. Ms. Moses said libraries were free to choose another company’s software if they wanted, but they would have had to purchase, install and manage it on-site, instead of through CLAN. Libraries that were already filtering had the option of keeping their old systems (some of them were using “Cyberpatrol” software instead of Websense); the CLAN program simply offered convenience.

All 48 member library systems ultimately agreed to filter through CLAN. The cost to each library is small – a few hundred dollars, Ms. Moses estimated. In contrast, tens of thousands of dollars of federal funds flow into the system.

IV. ABOUT WEBSense

Founded in 1994, Websense now bills itself as the industry's "leading provider of employee Internet management (EIM) solutions." While Websense markets itself mainly to corporations looking to restrict employees' Internet use, its list of clients also includes "thousands of schools and universities,"⁶ and groups as diverse as the U.S. Army facility at Fort Gordon and the Catholic Health Initiatives (which "has a mission to improve the health of the communities it serves - as well as to keep inappropriate Web content from the desktops of 16,500 of its employees").⁷

Websense literature touts its "master database" of "more than 6 million sites, classified into more than 80 categories" ranging from "military" to "educational institutions" to "pro-choice" to "non-traditional religions and occult and folklore" to "real estate" to "illegal drugs." Sites are compiled using both human and automated detection methods, including a reporting tool that anonymously transmits Internet surfing data from customers back to the company for evaluation and classification.⁸

Customers choose categories to block based on their objectives. The company claims that updates are constant, and customers can petition for the addition or re-classification of individual sites.

The database's accuracy, however, has been subject to question since free-speech watchdog groups began monitoring it in the late 1990s. The most recent report, released in 2001 by Peacefire.org, found inexplicable blocks on, among others, an educational site about autism (blocked as "gambling"), the Jewish Federation of Northeastern Pennsylvania (blocked as "sex"), and a religious ministry site (blocked as "tasteless").⁹

Noting analyses like the above, the federal court that struck down CIPA in 2002 based its decision partly on the blocking software's inability to distinguish between illegal and protected speech.

As the Court's decision stated, "[M]any erroneously blocked [Web] pages contain content that is completely innocuous for both adults and minors, and that no rational person could conclude matches the filtering companies' category definitions, such as 'pornography' or 'sex.'"¹⁰

Although blocking technology may have improved somewhat over the years, it still remains a "blunt instrument." Adults as well as teenagers using Websense-filtered library computers are still denied access to a wide range of legitimate material.

During a recent session at the Providence Public Library, the author of this report was denied access to, among other sites, the official web site of famed, if controversial, photographer Robert Mapplethorpe; a health web site for men; and an interview with actor Peter Sellers because it appeared on Playboy's web site.¹¹

In addition, although the Websense blocking screen purports to give the reason for blocking (e.g., "The Websense category 'adult content' is filtered"), the stated reason is sometimes cryptic. For example, a blocked Google search for "nudism" at the Providence Public Library generated a message that "The Websense category 'PRO blocked' is filtered. Keyword found: udis."

V. FILTER SETTINGS

CLAN implemented the Websense filter state-wide with three default category settings, noted below.¹² An administrator from each library was then able to log on to create an individual account. Each chose separately what categories of material to block, or to retain the default, which blocks the three categories of “sex,” “adult content,” and “nudity.” CLAN’s director said CLAN personnel determined use of these three settings to be the minimum needed for CIPA compliance. Websense defines these categories as follows:

SEX: *Sites that depict or graphically describe sexual acts or activity, including exhibitionism; also sites offering direct links to such sites.*

ADULT CONTENT: *Sites that display full or partial nudity in a sexual context, but not sexual activity; erotica; sexual paraphernalia; sex-oriented businesses as clubs, nightclubs, escort services; and sites supporting online purchases of such goods and services.*

NUDITY: *Sites that offer depictions of nude or semi-nude human forms, singly or in groups, not overtly sexual in intent or effect.*

Of the 31 responding libraries, 19 responded “Yes” to the ACLU survey question, “Do you use the minimum compliance (default) option?” An additional seven said they block “porno,” “adult content,” “sex,” “graphic sexual content,” or other categories presumably equivalent to the CLAN default, although the librarians did not describe them as such. One library did not answer this specific question.

Based on the above, 26 of the responding libraries claim to have limited their blocking as much as possible while still

complying with CIPA. However, there appears to be some confusion amongst these librarians over what categories the filters actually block.

A few librarians offered conflicting information: one library director, for example, reported that the filter is set to block “adult content, which includes porn and illegal drug use.” But in Websense, “illegal drug use” is a separate category from “adult content,” and a filter for it would need to be separately activated. “Adult content,” in this case, more likely describes CLAN’s minimal setting.

Similarly, the director of another library wrote in June (shortly before blocking was activated) that CLAN would choose the settings, and in December elaborated that the filter was set to block “Language and images deemed obscene as defined in section 1460 of Title 18, U.S. Code. Child pornography as defined in section 2256 of Title 18, U.S. Code or harmful to minors.” Although this description generally corresponds to Websense’s blocking categories, it is actually broader than what the law itself requires, as CIPA compliance requires the blocking only of *visual* images, not obscene “language.” Filter settings thus remain the subject of considerable confusion.

In addition, notwithstanding CLAN’s views that it has chosen the minimum blocking options necessary to comply with CIPA, that does not appear to be the case.

In defining the visual material “harmful to minors” that participating libraries must block, CIPA refers to images that depict sexual acts “or a lewd exhibition of the genitals,” **and** that, taken as a whole with respect to minors, “appeal to a prurient interest in nudity” and “lack serious literary, artistic” or other value.¹³

VI. DEACTIVATION

Thus, CLAN's use of Websense's "Nudity" category – which blocks "nude or semi-nude human forms ... not overtly sexual in intent or effect" – appears to go far beyond what CIPA itself requires.

Further, four of the responding libraries indicated that they had chosen to block additional categories of material by activating more filters:

Two of those libraries – Warwick and Pawtucket – block "Gambling" sites (defined by Websense as "sites that provide information about or promote gambling or support online gambling, involving a risk of losing money").

Two libraries – Warwick and Jamestown – block "Games" sites (defined as "sites that provide information about or promote electronic games, video games, computer games, role-playing games, or online games. Includes sweepstakes and giveaways").

One library – Warwick – blocks "Illegal" material, defined by Websense as "sites that provide instruction in or promote non-violent crime or unethical or dishonest behavior or the avoidance of prosecution therefore."

One library – Pawtucket – blocks "Personals and Dating" on children's computers. Pawtucket and Jamestown also block "Chat" on all computers.¹⁴

Finally, as will be described later on, blocking of additional sites may be more widespread than the survey results indicate, as at least one major library system – Providence – is blocking much more material than its survey answer indicated.

As the 2002 federal district court ruling pointed out, filters restrict access to "harmful material" that adults have a constitutional right to view. Ultimately, the U.S. Supreme Court declared use of blocking software to be constitutional, ***but only on the condition that it be deactivated for any lawful adult user who asks***. Because this qualifier is crucial to the constitutional implementation of the statute, it is worth quoting from the court opinions on this issue. Chief Justice Rehnquist's opinion for four members of the court explicitly stated:

Assuming that [overblocking] presents constitutional difficulties, any such concerns are dispelled by the ease with which patrons may have the filtering software disabled. When a patron encounters a blocked site, he need only ask a librarian to unblock it or (at least in the case of adults) disable the filter. . . . The Solicitor General confirmed that a "librarian can, in response to a request from a patron, unblock the filtering mechanism altogether," and further explained that a patron would not "have to explain ... why he was asking a site to be unblocked or the filtering to be disabled." (citations omitted)¹⁵

Justice Breyer echoed this point in his concurring opinion: "[T]he adult patron need only ask a librarian to unblock the specific Web site or, alternatively, ask the librarian 'Please disable the entire filter.'"¹⁶

Similarly, Justice Kennedy's concurring opinion warned: "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 material is burdened in some other substantial way," another chal-

lenge to the law's application could be brought.¹⁷

The court decision recognizes that there are two possible types of deactivation: **full session** and **site-specific**. In the first, a patron asks for the filter to be turned off completely when he or she logs onto the Internet and it remains off for the duration of the session, allowing access to all sites. In the second, a patron asks that the filter be bypassed when access to a specific site is blocked, allowing only that site to be viewed. The plurality and concurring opinions made clear that adult patrons were entitled to *both* options.

On a superficial level, the survey results show that Rhode Island libraries are all heeding the court decision by allowing for filter deactivation.

More distressingly, however, as noted below, at least one major public library is ignoring its constitutional obligations in this regard.

In addition, library procedures for making patrons aware of this option were quite varied and sometimes non-existent. (See the "Notification" section below.) Furthermore, many librarians remain confused as to what types of deactivation are available to patrons.

Initially, two CLAN officials advised the author of this report that Rhode Island libraries **did not** offer full-session disabling of the blocking software. Notwithstanding the clear command of the court opinions, it was their stated belief that CIPA forbids such, and that a library that turned off a filter for an entire session would bring the system out of compliance with the Act.

Instead, they claimed that deactivation of the filter in member libraries was done

only on a per-site basis at each branch via a password that the local administrator obtains when he or she sets up the account.

They further advised that the filters were configured to unblock a specific site for 30 minutes. Filtering, according to CLAN, would automatically revert after that time period, or beforehand should a patron exit the unblocked site and attempt to access another.¹⁸

This information turned out not to be correct. We learned this when one librarian contacted by the ACLU deactivated a blocked web site by use of the designated password, but then found that she was able to access other purportedly blocked sites as well.

The author of this report then confirmed, through her own test at a local library, that the system does indeed provide full-session deactivation.

In short, the agency responsible for implementing the blocking of library computers appeared to be unaware of a key – and necessary – feature of the installed software's operation. When later asked about this discrepancy, CLAN officials responded that there had been a recent upgrade in the blocking software, changing the disabling feature from site-specific to session-specific (though the disabling feature still unblocks for only 30 minutes per session).

It is thus not surprising that our survey results show that library directors are as confused as CLAN about this. Seventeen of the responding libraries stated that they offer full session deactivation or both full and site-specific deactivation. Thirteen of the libraries, in contrast, stated that they could offer only site-specific disabling of the filter.

In follow-up inquiries, several librarians said that they assumed full-session deactivation was possible but had never actually attempted it because patrons never asked. Others said they had received conflicting information at CLAN meetings, or had initially believed that deactivation lasted for a full session but had since been advised otherwise.

Indeed, one respondent observed that library directors, as a group, felt stumped by technical aspects of the filters, merely knowing that CIPA made them necessary. None claimed to have been provided any directives or guidance in writing from CLAN about the system. Because the majority of libraries have received few or no deactivation requests to date, most are simply unaware of the parameters of deactivation.¹⁹

All deactivation requires help from the librarian who either supplies or enters the password. In practice, this means that a library's official policy may or may not be followed when a patron makes a request. A recent visit to the Providence Library by the author of this report raised concerns in this regard.

There, a librarian responded to a deactivation request – for a blocked Google search on nudism – with questions about subject matter, judgmental comments, and ultimately a refusal to disable the filter for viewing of what she wrongly characterized as “pornography.”

When asked about the Providence library's policy, the librarian said that it was to block viewing of pornographic matter, and that lifting the filter was not an option, even for adults.

Two weeks later, when another ACLU staff person asked that the official web site of artist Robert Mapplethorpe be un-

blocked, she too was rebuffed. So although the Providence Library policy officially allows deactivation, the option is not available to many adult patrons.

One of the survey respondents in another community reported a similar experience when visiting her own town's library as a patron with her child. A request on behalf of her son that an informational gaming site be unblocked was met with refusal. The supervisor to whom this respondent appealed asked why her son wanted to “cheat” at games, a question that embarrassed both mother and child.

It is unknown how many other library patrons have been shamed or denied when requesting filter deactivation. But in at least some communities, library practices may not match official policies, and thus may be even more restrictive than they first appear.

VII. NOTIFICATION

While the Supreme Court ruling discussed deactivation procedures in some detail, it was silent on how patrons are to be notified of that right. Deactivation options are of little use if nobody knows about them. And while all Rhode Island libraries offer deactivation, not all of them make the option known to the public. Some appear quite deficient in their notification practices, or have opted not to notify at all.

Signs, written Internet policies, and online policies are among the methods used by the Rhode Island libraries that do notify patrons about deactivation. Signs may be placed at a central desk or at individual computer terminals. Text varies, from terse to encouraging. Some examples appear on the following page.

However, many libraries rely on the filter itself as the only form of notification. Specifically, when a patron encounters a blocked site, a Websense screen appears with the company's logo and the message: "Access to this web page is restricted at this time." A "reason" is provided, typically the blocked category into which the website falls (e.g., "adult content") or a keyword that triggered the block. A blank space on the screen invites users to "Enter your Websense password, and then click the Password Override button to view this site."

The user also has an option to "Click for more information to learn more about your access policy," but this only opens a banner that cryptically states, "Your Websense password allows you to access this page at anytime." The blocking screen does not give directions for obtaining the password, nor does it explain adult users' rights. CLAN Director Virginia Moses said the screen is the Websense company's default page, and is standardized across the state.

Eleven libraries said they use no notification method beyond the blocking screen. This is problematic because the information provided by the Websense message is virtually useless. Patrons have no way of knowing that deactivation is readily available. To the contrary, the message seems to imply that deactivation is an administrative process requiring special authorization. In the absence of additional signage, nothing suggests that accessing the site is as simple as asking a librarian for help.

Unfortunately, some libraries that posted notification signs when filtering began in June (or planned to do so) had stopped by December. In the words of one library director (who said she posted signs in June but reported none in December), "We do not have a sign posted. Patrons, for the most part, have not run into a problem with the filter."

The director of another library also wrote on the June survey that signs would be employed, but said in December that they had not been posted, and that no alternative method was in use.

The Providence Public Library is among those that doesn't in any way advertise deactivation. According to its response to the December survey, "each patron's deactivation is handled on a case-by-case basis." Although patrons read a computerized version of the "Internet Access Policy and User Guidelines" at the beginning of their session, neither CIPA nor filters are mentioned.

In fact, the policy misleadingly states, "Since there is no external monitoring, users may find some material on the Internet that is unreliable, offensive, disturbing, or illegal. Providence Public Library does not guarantee the accuracy of the information users might obtain through the Internet."

As noted above, a Providence librarian wrongly informed ACLU patrons that the blocking software could not be bypassed in response to a legitimate request. Even when reminded that the blocking screen promised access with a password, the librarian would not provide one.

Given this troubling situation, the presence of clear and undisputable signs in computer areas, specifying patrons' rights to unblocked access, seems even more crucial. For the moment, however, Providence's main branch appears oblivious to its patrons' lawful Internet access rights.

Excerpts From Respondent Libraries' Filtering Notification Signs

"Internet filtering software has been installed on this computer to comply with CIPA, a federal law. Internet filtering under CIPA is a form of censorship intended to protect the public from 'unacceptable' content. If you are at least 17 years old you may disable the software by using a password. This allows access to any blocked sites you may choose to view. Ask at the circulation desk for a password card." (Tiverton)

"This computer is equipped with filtering software. If you are age 17 or older and would like a site unblocked, just ask. We would be happy to assist you." (North Scituate Public Library)

"As of July 1st, 2004, the Internet is filtered at Mohr Library. There will be a message and a prompt for a password wherever a site is blocked. Under the law, computer users 17 or older may ask staff to unblock sites. The Children's Internet Protection Act (CIPA), intended to prevent computers in schools and libraries from downloading illegal images or obscene images that are not constitutionally protected, was passed in December of 2000. The Supreme Court has confirmed that libraries cannot qualify for certain types of Federal funds to support Internet use without filtering and taking other steps to protect minors. Rhode Island public libraries in the Cooperating Libraries Automated Network (CLAN) depend on such Federal funds, and are thus required to use filters. Filters do not always work. There is no guarantee that obscene or illegal images will be blocked. Also, filters will block some sites that serve legitimate research needs. Please do not hesitate to ask for assistance." (Marian Mohr Library, Johnston)

"To receive federal funding for our internet provision, the library must comply with the Childhood Internet Protection Act (CIPA). Effective July 1, 2004, all computers in this library will be filtered by Websense. If you are over 17 years old, and a site you are trying to view is blocked, please ask the reference librarian for assistance." (South Kingstown)

"Because of CIPA (Children's Internet Protection Act), it is federally mandated that all public access computers have filtering software. Please ask any staff member to unblock this filter." (Island Free Library)

"If you are unable to access a website, please see a librarian." (Coventry)

"Internet is filtered to comply with CIPA. Filters can be bypassed by request in individual instances." (Langworthy Pubic Library, Hopkinton)

"In accordance with the Children's Internet Protection Act (CIPA), all Foster public computers with access to the Internet are now outfitted with a filter. Patrons 17 or older may ask that the filter be lifted for their session on the computer. You need only ask at the desk and we will be happy to help you." (Foster)

VIII. PATRON AND LIBRARIAN RESPONSE

All of the responding libraries reported minimal patron response to the filters, with rare or non-existent deactivation requests. A few librarians expressed surprise at this, particularly the ones that began filtering in July.

In the words of the Langworthy Library Director, who had not received a single deactivation request during a five month period, “We’ve have had no reaction whatsoever to filtering, which is mildly surprising to me.”

Comments from other librarians ranged from “no complaints at all about filtering” (Portsmouth) to “it’s a non-issue” (Bristol) to “public loves the filter” (Cumberland).

The Barrington library director wrote, “We thought putting the filters on would raise objections from some library users, but so far no one has raised any objections...We expected more problems, but maybe because we have it at the lowest level of filtering, no problems have been observed.”

The director of the North Scituate Library, however, had a less optimistic view of the lack of deactivation requests, inferring a “chilling effect” on patrons from their response.

The Gloucester library director registered a similar observation, noting that the entire Playboy website was blocked, preventing access to articles and interviews as well as to pictures. And yet, she observed, deactivation requests were extremely rare, leading her to wonder if patrons were simply giving up on blocked sites.

A West Warwick librarian guessed as much: “We don’t know [that a site has been

blocked] unless a patron tells us,” she said. “Often I think they’re reluctant to do so. They assume they’ve done something wrong, and they certainly don’t want to bring it to our attention.”

Because this librarian had experienced blocking of legitimate sites herself, she assumed that many more patrons were encountering blocked sites than were asking that the filters be disabled.

On the whole, and quite unexpectedly, many librarians have responded neutrally to the use of blocking software. While some reiterated their opposition in their latest survey responses, many more reported both surprise and relief at the lack of problems that the filters raised.

A sense of complacency seems to predominate, as anticipated problems with “overblocking” of legitimate sites and complaints from disgruntled patrons failed to materialize.²⁰

The Director of the Barrington Library wrote in June that, “We had resisted filters in the past but as a member of CLAN which receives substantial federal funding, we had to comply.” By December, she reported, “We have had no comments regarding the filters. The staff hasn’t found it to interfere with the research they do.”

The Harmony Library Director also noted diminished opposition: “[We’ve had] no comments from patrons. Librarians opposed because of American Library Association’s Library Bill of Rights tenet ‘Free and Equal Access to Information,’ but as of now, the staff has not been encumbered by filters.”

CLAN Executive Director Virginia Moses said she herself was surprised by the lack

of reaction, noting in November that in spite of initial controversy, “there’s been absolutely no feedback, one way or the other,” either from the newly-filtering libraries or from the ones that had switched from individual filters to the CLAN service.

On a positive note, the Jamestown library was no longer blocking “language considered foul” as it had been in the past.

An additional library – Coventry – had also lifted existing blocks on “tasteless” and “gambling” sites by December, choosing (according to its survey) to block only “porno” (which we assume means the CLAN minimum). Given that Websense defines “tasteless” sites as those “with content that is gratuitously offensive or shocking, but not violent or frightening, [including] sites devoted in whole or in part to scatology and similar topics or to improper language, humor or behavior,” the lifting of this category appears to remove a serious impediment to free speech.

The North Scituate library was among the few that reported making deliberate changes to minimize CIPA’s effects. There, staff opted to eliminate a sign-in requirement for all users and the parental permission requirement for minors in an attempt to “maintain some privacy in the face of the Patriot Act.”

The Cranston library also eliminated a requirement that computer users have a library card and a parental permission requirement for minors when it installed blocking software back in 2002.

Other changes within the library community appear to be both more subtle and less positive.

Compare, for example, the East Providence Library’s Internet Policy in its pre-

CIPA and post-CIPA forms. (The policy was revised in August of 2004 in response to the Act.) Prior to CIPA, the policy expressed a strong reluctance to limit access to information, even while acknowledging that some information might be controversial or offensive. The policy specifically cautioned against censoring minors:

“The library provides Internet access equally to all library users. Only parents or guardians – NOT the library or its staff – may restrict their children – and only their children – from access to the Internet or other library materials....Ultimately, all library users, whether children or adults, are the final selectors in using the Internet and other library materials, and are responsible for their individual choices and decisions and use these resources at their own risk.”

The new policy reverses this premise of accessibility: “The freedom to access information is also a responsibility. Only parent or guardians – NOT the library or its staff – may give permission for their children – and only their children – to access the Internet...”

Such changes, while subtle, convey a new sense of anxiety about information access and its consequences. One librarian who opposes blocking software observed that “filtering gives librarians the attitude that they can pick and choose what people see.” It furthermore creates serious consequences for librarians who “choose” poorly, thus running afoul of the law.

Actually, the problem runs much deeper than that. Blocking software actually gives **private businesses** – the makers of the software – control over what library patrons can see. It thus takes decisions out of the hands of professional librarians altogether.

IX. THE CASE OF THE PROVIDENCE PUBLIC LIBRARY

In preparing this report, two ACLU staff members separately visited the main branch of the Providence Public Library in downtown Providence. The purpose was to test the flaws in the blocking technology that all libraries in the state are now using pursuant to CIPA. The visits actually provided additional, and even more disturbing, lessons about implementation of the law.²¹

The filtering software itself performed as expected – quite poorly. Overblocking problems quickly became apparent. As noted in Section IV, the author of this report was blocked from such on-line material as an interview with actor Peter Sellers.

But the visits turned up two other troubling aspects to the Providence library's practices. First, conducting Google searches on the computers led to the discovery that Providence libraries are engaged in *language-based* blocking.

CIPA bars access only to visual images, and while the three Websense blocking categories being used by CLAN for CIPA compliance – “sex,” “adult content,” and “nudity” – clearly overblock by filtering sites without images, the major goal of those categories is to block visual depictions. Yet at the Providence library, a Google search for the word “nudism” was completely blocked. The computer screen confirmed that the blocking was due to a “keyword,” not to one of the three categories.

The “keyword” listed on the screen was “udis,” meaning that any word containing those fragmentary letters together is blocked. Ironically, then, any patron attempting to Google the word “prudish” at a Providence library also finds herself facing a blocked result.

Since Providence had not indicated on its response to our survey that it was blocking anything other than the CLAN default categories, this suggests that additional and more expansive blocking of sites may be much more prevalent than our survey results suggest.

Most troubling of all, however, was what occurred when requests were made at the Providence library to have specific sites unblocked. On the first visit, as described in Section VI, the librarian in charge of the computer area refused to unblock the filter when the “nudism” Google search was blocked.

Two weeks later, another ACLU staff person attempted to visit the official web site of artist Robert Mapplethorpe. This too was blocked by Websense (as “adult content”), and when the staff person asked the librarian to unblock the site, this request was also rejected.

In short, the busiest public library in the state appears to have a de facto policy of barring Internet access to any web site that Websense's private filtering technology blocks. If this is happening in Providence, one can only speculate whether there are similar disturbing discrepancies in practice versus policy at other public libraries when it comes to unblocking sites.

X. RECOMMENDATIONS

The above survey results show that several issues relating to Internet filters and their effects require prompt attention from the library community. The RI ACLU recommends the following steps:

1. Use “Minimum Compliance” Filter Settings

All libraries that now block categories of material beyond what CIPA requires should stop. Allowing a private company like Websense to dictate to public library users what sites they may see is an abandonment of the public library’s core mission.

When one further considers the inevitable and far-reaching inaccuracy of the software, it is difficult to justify use of anything other than the minimum settings necessary to comply with CIPA.

CLAN itself should also review its settings for the system, as we strongly question CLAN’s inclusion of the “Nudity” Websense category in its minimum compliance option. Websense literature describes this category as “nude or seminude forms, singly or in groups, not overtly sexual in intent or effect.” Such material does not fall within CIPA’s definition of “harmful to minors,” and is thus not banned by the Act.

2. Provide Patrons Meaningful Notification of Their Rights

The 2004 survey results showed that one-third of responding libraries did not notify patrons of their right to deactivation, instead relying on the Websense blocking screen to do as much. However, the blocking screen contains minimal information and no instructions about how to deactivate.

The lack of adequate information can only deter patrons from exercising their rights to access “blocked” sites. We urge all libraries to post additional signs or to employ a separate “click-through” or “pop-up” statement about blocking for each user to view at the beginning of a session.

We also urge CLAN to create a more informative “blocker” screen to replace the Websense default that is now in use.

3. Provide Appropriate Staff Training

Survey results and personal experience suggest that not all librarians are informed about how the blocking software functions, or about patrons’ right to deactivation. Because requests for deactivation are reportedly rare, it is all the more crucial that staff receive training in how to respond to them so as to not be unprepared.

CLAN administrators should also train, and provide written materials to, local librarians on the blocking software’s technical and functional aspects. Survey results demonstrated considerable confusion about blocked categories and about how the filter can be configured at the local level, including options for deactivation.

4. Consider Exemptions for Adult-Accessed Computers

In its 2003 report on Internet blocking, the ACLU of Rhode Island recommended that libraries take steps to provide filter-free Internet service to **all** adult users, not just those actively seeking it.

The American Library Association suggested possible methods for doing this, while remaining in compliance with CIPA.

X. CONCLUSION

For example, a library could segregate computers for unblocked Internet access by adults. Persons wishing to use those computers would sign a form, display identification, etc., indicating that the patron (1) is 17 or older, and (2) seeks unblocked Internet access “for lawful purposes.” The library would be responsible for ensuring that only adults gain access to these Internet terminals.

In a more technologically sophisticated fashion suggested by the ALA, a library could use a “pop-up screen” to advertise automatic self-deactivation after a user has logged on using a “smart card” that proves he or she is an adult.

In light of CLAN’s inconsistent position on full-session deactivation, it is no surprise that such measures are not in effect anywhere in Rhode Island. We renew this recommendation.

In the same vein, CLAN should revise the system so that libraries can disable the blocking software on *staff* computers completely or at will. In the survey, several librarians said they felt encumbered by the software on their computers, but were resigned to the situation because they believed CIPA required it.

Although it is true that CIPA, as interpreted by the FCC, requires that blocking software be **installed** on all computers,²² **disabling** it on staff computers should not pose legal problems because the staff are “adults” engaged in “lawful” work. Subjecting library staff members to 30-minute disabling sessions is both burdensome and unnecessary.

Some ten months after its commencement, Internet blocking in Rhode Island public libraries presents a mixed, but surprisingly troubling, picture.

CLAN itself – the group responsible for administering the blocking software – has harbored mistaken notions that the filters could be “turned off” only on a site-by-site basis, lest compliance be compromised.

Individual librarians show similar confusion. Pleading technical handicaps, many have failed to familiarize themselves with the blocking software and its deactivation options. Those that lack this knowledge are placing themselves at the mercy of a private company’s technology that should never be permitted to take control.

Among the most troubling indicators in this mixed picture is the scarcity of deactivation requests. While some librarians interpret this as a sign that blocking does not burden patrons, an alternative explanation is much more plausible: adults faced with a pop-up that cites “adult content” or “sex” as the reason for denied access are unlikely to approach a librarian for assistance. They are far more likely to simply abandon the search. We suspect that “chilling” is more prevalent than is acknowledged.

Now is not the time for the library community to enter a state of complacency. Neither should librarians accept (or embrace) the role of moral arbiters. They must continue to promote access to diverse information for diverse people, a charge that simply cannot be meaningfully met by bowing to the censorship that for-profit companies impose through their flawed blocking technology, and bowing to it in ways that even a conservative U.S. Supreme Court did not tolerate.²³

ENDNOTES

¹ Public Law 106-554.

² 201 F.Supp.2d 401 (E.D. Pa. 2002)

³ *United States v. American Library Association*, 539 U.S. 194 (2003)

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

⁵ “Bowdler’s Legacy: Congress, the Supreme Court and Internet Censorship in Rhode Island Public Libraries,” August, 2003. Available online at: <<http://www.riaclu.org/misc/libraryinternetreport.pdf>>.

⁶ <http://www.websense.com/educators/>

⁷ <http://www.websense.com/products/why/casestudies/>

⁸ <http://www.websense.com/products/about/Reporting/faq.php#9>

⁹ <http://www.peacefire.org>

¹⁰ 201 F.Supp.2d 401 (E.D. Pa. 2002)

¹¹ The blocked sites that are referenced were: www.mapplethorpe.org; www.4-men.org; and www.playboy.com/arts-entertainment/features/petersellers (all blocked as “adult content” or “nudity”).

¹² Descriptions of all of the company’s blocking categories, including the three used by CLAN, can be found at <<http://ww2.websense.com/global/en/ProductsServices/MasterDatabase/URLCategories.php>>

¹³ In full, the Act defines material that is “harmful to minors” as “any picture, image, graphic image file, or other visual depiction that (i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex or excretion; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.” 20 U.S.C. §9134(f)(7)(B).

¹⁴ Since restrictions of computer use for “Chat” purposes are content-neutral and are specifically aimed at how computers are used from a resources perspective, they do not raise the same type of censorship issues that blocking of content-based categories does.

¹⁵ *United States v. American Library Association*, 539 U.S. at 208-209.

¹⁶ *Id.* at 219.

¹⁷ *Id.* at 215.

¹⁸ One library – Providence – reported that deactivation lasts for 20 minutes.

¹⁹ Some library directors demonstrated similar confusion on CIPA’s reach to computers used by staff. Five responding libraries stated that they did not filter certain staff computers. However, the Federal Communications Commission has interpreted CIPA as requiring filtering of *all* library computers, including those of staff. *In re Federal State Joint Board on Universal Service: Children’s Internet Protection Act*, CC Docket No. 96-45, Report and Order, FCC 01-120, ¶ 30 (Apr. 5, 2001). And, in fact, it does not appear that CLAN

has taken the technical steps that would be necessary to free any individual library computers from filtering.

²⁰ The survey did report on-going, if not overwhelming, blocking problems. For example, the director of the Lincoln library said two patrons and one staff member had encountered inappropriate blocks (one was of the online auction site EBAY, and one blocked a search for a book title.) The director of the Greenville Library wrote that the filters “[s]ometimes will block a legitimate site.” The Technology Coordinator of the West Warwick library reported that a library patron found himself suddenly unable to access a gambling website that he visited regularly. A call to CLAN revealed that another library had just added “gambling” to its list of filtered categories; the block had erroneously transferred to other libraries because of a technical glitch. CLAN corrected the problem, and the West Warwick patron’s access to the gambling site was restored.

While these respondents reported over-blocking, another said that the filter is failing to block explicit sites. One director reported that kids regularly view pornography, and seemed to “learn how to get around [the filter] in five minutes.” Websense’s inefficacy, she said, was a matter of concern for staff, who need to intervene when they become aware of inappropriate viewing. A few other libraries reported occasional problems with deactivation, which they said were resolved by contacting CLAN.

²¹ Both visits took place in January, 2005.

²² See footnote 19.

²³ This report was written by Amy Myrick, Program and Development Coordinator at the RI ACLU.

Appendix

Index of Libraries Participating in 2004 Surveys

Barrington Public Library
Brownell Library
Central Falls Free Public Library (June only)
Coventry Public Library
Cranston Public Library
Cumberland Public Library (June only)
East Providence Public Library
East Smithfield Public Library
Essex Public Library
Foster Public Library
George Hail Free Library (December only)
Glocester Manton Free Public Library
Greenville Public Library
Harmony Library
Island Free Library (December only)
Jamestown Philomenian Library
Langworthy Public Library
Lincoln Public Library
Louttit Library
Marian J. Mohr Memorial Library
North Kingstown Free Library
North Scituate Public Library
North Smithfield Public Library
Pawtucket Public Library
Portsmouth Free Public Library
Providence Public Library
Rogers Free Library
South Kingstown Public Library
Tiverton Library Services
Warwick Public Library
West Warwick Public Library
