



June 18, 2007

**VIA FACSIMILE/U.S. MAIL**

Redding Municipal Library Board of Trustees  
PO Box 496071  
777 Cypress Ave  
Redding, CA 96001  
Fax: (530)225-4463

Re: Proposed Internet and Computer Use Policy

Dear Members of the Library Board:

I write to express the concern of the ACLU of Northern California regarding the proposed Internet and Computer Use Policy now under consideration by the Board. As I understand it, you have before you three versions of such a policy, only one of which provides adults with an unqualified right to ask for and obtain unfiltered internet access. None of them seem to make provision for the situation in which a minor's access to material is blocked even though the material is not obscene, "harmful to minors," or child pornography.

All filtering software systems inevitably block materials that adults have a First Amendment right to access through the internet. They also frequently erroneously block materials that minors have a First Amendment right to access. Accordingly, a policy that denies adults unfiltered access to the internet upon request would violate that adult's First Amendment rights and would be subject to legal challenge. Similar concerns are raised if minors are denied access to protected material.

Outside a few narrowly defined categories, "the First Amendment bars the government from dictating what we see or read or speak or hear." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245 (2002) (hereafter "*Free Speech Coalition*"). Unlike obscenity or child pornography, sexually explicit speech is entitled to full constitutional protection as to adults. *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 811(2000); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 874 (1997); *Sable Communications v. FCC*, 492 U.S. 115, 126 (1989) (hereafter "*Sable*").

Filtering software, even though intended to block access only to material that is obscene, "harmful to minors," or child pornography, nevertheless blocks vast amounts of protected speech. In part, that is because a software program is simply incapable of making the fine legal distinctions made in the courtroom as to whether material falls into one of these categories.

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STEPHEN V. BOMSE, GENERAL COUNSEL

Over-blocking also results from more systemic flaws in the way either machines or humans make decisions as to whether material should be blocked. This is a problem that has not gone away over the years. Thus a June 2005 Consumer Reports article on filtering software had this to say:

As we found in our tests in 2001, the best blockers today tended to block many sites they shouldn't.

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Informative sites are snubbed, too. The best porn blockers were heavy-handed against sites about health issues, sex education, civil rights, and politics. For example, seven products blocked KeepAndBearArms.com, a site advocating gun owners' rights. Most unwarranted blocking occurred with sites featuring sex education or gender-related issues. Some drug-education sites were blocked. For example, four products blocked the National Institute on Drug Abuse, part of the federal government's National Institutes of Health.

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Research can be a headache. These programs may impede older children doing research for school reports. Seven block the entire results page of a Google or Yahoo search if some links have objectionable words in them. AOL, KidsNet, Norton Internet Security, and Safe Eyes allow searches to be completed by displaying the entire results page or blocking only offending words.

The full article is available at <http://www.consumerreports.org/cro/electronics-computers/internet-filtering-software-605/overview/index.htm>.

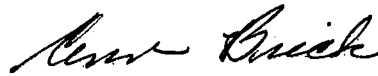
The problems inherent in all filtering software systems are compounded when such systems are used to block material that is "harmful to minors." By definition, material falling into this category is material that *adults* have a First Amendment right to see and read. Thus an internet policy that conditions the ability of adults to obtain unfiltered access based on whether they are doing so for "bona fide research purposes," denies adults access to constitutionally protected materials simply because access is sought for a purpose other than research. That is impermissible.

In *United States v. American Library Association*, 539 U.S. 194 (2003), the United States Supreme Court considered the constitutionality of a piece of federal legislation, the Children's Internet Protection Act, which requires libraries receiving certain federal funds to use filtering software to deny access to materials that are obscene, "harmful to minors," or constitute child pornography. The Court upheld the constitutionality of the statute *only* because it read the statute as requiring libraries to honor requests from adults for unfiltered access to the internet. Justice Kennedy and Justice Breyer, whose votes were necessary to obtaining a majority upholding the statute, made this clear. See *id.* at 214-15 (Kennedy, J., concurring in the judgment); *id.* at 219-220 (Breyer J. concurring in the judgment). Significantly, neither Justice Kennedy nor Justice Breyer limited his view on the matter to providing only a qualified ability to obtain unfiltered access. See *also id.* at 209 (plurality opinion interpreting statute as not requiring adult patrons to provide a reason for asking to have filtering software turned off).

This view is consistent with earlier decisions in which the Supreme Court has held that adult access to internet content may not be limited to materials that are only fit for children. See, e.g., *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 665 (2004) ("A statute that 'effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another . . . is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.'" (quoting *Reno v. ACLU*, 521 U.S. at 874); see also, *Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 759 (1996) (televised content); *Sable Communications*, 492 U.S. at 128 (1989) (telephone communications); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 73 (1983) (mailed advertisements); *Butler v. Michigan*, 352 U.S. 380, 383 (1957) (books). Yet that is precisely what would happen if a library were to deny adults unfiltered access to the internet. Such a policy would therefore be unconstitutional and subject to legal challenge.

The library is meant to be a place where the community can expand its intellectual and cultural horizons. As Justice Kennedy noted in *Free Speech Coalition*, 535 U.S. at 253, "[t]he right to think is the beginning of freedom, and speech must be protected from the government because speech is beginning of thought." The internet expands the promise of intellectual freedom inherent in the First Amendment by opening new avenues for intellectual exploration. Accordingly, we ask that you adopt a policy that allows adults the right to unfiltered internet access upon request, regardless of the reason, and that allows minors to obtain access to materials that were erroneously blocked by the software.

Very truly yours,



Ann Brick  
Staff Attorney

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