

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN LIBRARY ASSOCIATION, et al.	)	
Plaintiffs	)	
	)	
v.	)	Civil Action No. 01-CV-1303
	)	
UNITED STATES OF AMERICA, et al.	)	
Defendants	)	
_____	)	
	)	
MULTNOMAH COUNTY PUBLIC LIBRARY,	)	
et al.,	)	
Plaintiffs	)	
	)	
v.	)	Civil Action No. 01-CV-1322
	)	
UNITED STATES OF AMERICA, et al.	)	
Defendants	)	
_____	)	

**REDACTED JOINT TRIAL STIPULATIONS OF ALL PARTIES**

Pursuant to this Court’s order, plaintiffs and defendants submit the following redacted joint trial stipulations. The stipulations cover the following topics: Identity of the Plaintiffs (Paragraphs 1-114); the Nature and Operation of the E-Rate Program (Paragraphs 115-178); The Institute of Museum and Library Services (Paragraphs 179-218); Nature of the Internet (Paragraphs 219-261); Libraries and the Internet (Paragraphs 262-274); and Technology Protection Measures (Paragraphs 275-324).

**IDENTITY OF THE PLAINTIFFS**

**THE ALA PLAINTIFFS**

**American Library Association (ALA)**

1. The American Library Association (ALA) is a non-profit, educational organization committed to the preservation of the American library as a resource indispensable to the intellectual, cultural, and educational welfare of the Nation.

2. Some of ALA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access.
3. The interests ALA seeks to protect in this litigation are germane to ALA's purposes.

#### The Freedom to Read Foundation (FTRF)

4. The Freedom to Read Foundation (FTRF) is a non-profit membership organization established in 1969 by the ALA to promote and defend First Amendment rights; to foster libraries as institutions fulfilling the promise of the First Amendment for every citizen; to support the rights of libraries to include in their collections and make available to the public any work they may legally acquire; and to set legal precedent for the freedom to read on behalf of all citizens.
5. Some of FTRF's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access.
6. The interests FTRF seeks to protect in this litigation are germane to FTRF's purposes.

#### The Alaska Library Association (AkLA)

7. The Alaska Library Association (AkLA) is a non-profit organization of libraries, library professionals, paraprofessionals, library aides, trustees, volunteers, and others committed to fostering cooperation among libraries, safeguarding intellectual freedom, and promoting access to information for all Alaskans.
8. Some of AkLA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access.
9. The interests AkLA seeks to protect in this litigation are germane to AkLA's purposes.

#### The California Library Association (CLA)

10. The California Library Association (CLA) is a non-profit organization with over fifteen hundred members, including libraries, librarians, library employees, library students, friends, trustees and citizens.
11. CLA promotes the basic goals of intellectual freedom and public access to information, and provides leadership for the development, promotion, and improvement of library services, librarianship, and the library community in the state of California.
12. Some of CLA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access.
13. The interests CLA seeks to protect in this litigation are germane to CLA's purposes.

The New England Library Association (NELA)

14. The New England Library Association (NELA) is a non-profit organization serving states in the New England region. NELA has over one thousand members, including libraries, librarians, and library trustees or friends of the libraries. The mission of NELA is to promote intellectual freedom, public access to information, and excellence in library services for the people of New England. Some of NELA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access.
15. The interests NELA seeks to protect in this litigation are germane to NELA's purposes.

The New York Library Association (NYLA)

16. The New York Library Association (NYLA) is a non-profit organization with several thousand members, including libraries, librarians, library trustees, and friends of libraries.
17. The mission of the organization is to lead in the development, promotion and improvement of library and information services and the profession of librarianship in order to enhance learning, quality of life, and equal opportunity for all New Yorkers.
18. One of NYLA's primary goals is to protect and promote intellectual freedom and the First Amendment right of free expression, and to ensure equitable access to information.
19. Some of NYLA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access.
20. The interests NYLA seeks to protect in this litigation are germane to NYLA's purposes.

The Association of Community Organizations for Reform Now (ACORN)

21. The Association of Community Organizations for Reform Now (ACORN) is a national membership-based, non-profit corporation organized under the laws of Arkansas with over 100,000 member families across the country.
22. The purpose of ACORN is to advance the interests of its low and moderate income membership in every area of its interests and concerns, including the rights of its members to obtain access to valuable public information for free at public libraries including information available on the Internet.
23. Some of ACORN's members gain access to the Internet at public libraries that receive e-rate discounts or LSTA funds for the provision of public Internet access.
24. The interests ACORN seeks to protect in this litigation are germane to ACORN's purposes.

### Friends of the Philadelphia City Institute Library (PCI Friends)

25. Friends of the Philadelphia City Institute Library (PCI Friends) is a voluntary non-profit membership organization based in Philadelphia dedicated to supporting and promoting the ability of the Philadelphia City Institute Library and the Free Library system to provide a wide and diverse range of free information and resources to serve the entire community and its residents' quest for knowledge, inspiration, enjoyment and excellence.
26. PCI Friends' members include community leaders, educators, students, parents and grandparents of minors, and other individuals.
27. Some of PCI Friends' members gain access to the Internet at PCI Library or other branches of the Free Library of Philadelphia, both of which receive e-rate discounts and LSTA funds for the provision of public Internet access.
28. The interests PCI Friends seeks to protect in this litigation are germane to PCI Friends' purposes.

### Pennsylvania Alliance for Democracy (PAD)

29. Pennsylvania Alliance for Democracy (PAD) is a statewide non-profit organization whose purpose is to create and sustain a community of groups and individuals in order to promote and defend democratic values, including respect for a diverse society, intellectual freedom, and other constitutional and civil rights.
30. PAD's Board of Directors and Advisory Board comprise leaders of civic and religious groups in Pennsylvania, and PAD serves as an umbrella organization for creating and coordinating public policy positions and educational activities on various issues by these groups, their members, and other individuals.
31. PAD also manages several statewide Internet listserves comprising hundreds of Pennsylvania residents through which PAD distributes its position papers, news, announcements, and other information.
32. Some of PAD's members gain access to the Internet at public libraries that receive e-rate discounts or LSTA funds for the provision of public Internet access.
33. The interests PAD seeks to protect in this litigation are germane to PAD's purposes.

### Elizabeth Hrenda

34. Plaintiff Elizabeth Hrenda lives in Susequehanna Township, near Harrisburg, Pennsylvania.
35. Ms. Hrenda is a user of the Dauphin County, Pennsylvania Library System.

36. Ms. Hrenda and her children are currently patrons of the East Shore and Walnut Street branch libraries.
37. Ms. Hrenda has conducted a variety of searches on the Internet, and has recently used the Internet to conduct searches related to her work, including accessing fundraising resources.
38. Ms. Hrenda's fifteen-year-old son has used the Internet at the library to conduct biographical searches for history projects and recently used the Internet for a research project on a popular rap artist for school.
38. Ms. Hrenda does not know whether the library she and her children visit uses content filters on all Internet-accessible computer terminals available to the public. To the best of her knowledge, Ms. Hrenda and her children have not been denied access to any particular Web site(s) or any other information on the Internet during their research at a public library as a result of the installation and operation of a content filter.
39. Ms. Hrenda does not know whether the library she and her children currently utilize will agree to accept the conditions imposed by CIPA on libraries that choose to accept either universal service discounts or LSTA funds. Nor does Ms. Hrenda know which technology protection measure the library will install, or how the library will implement it, should the library choose to accept CIPA's conditions.

#### C. Donald Weinberg

40. Plaintiff C. Donald Weinberg lives in Philadelphia, Pennsylvania, and is a regular user of the Central Library Branch of the Free Library of Philadelphia.
41. Mr. Weinberg uses the library a few times each week for research and to prepare for a community college literature course he teaches at the library.
42. Mr. Weinberg's students use the Internet at the library for research related to his course.
43. Mr. Weinberg does not know whether the library he visits uses content filters on all Internet-accessible computer terminals available to the public. Mr. Weinberg does not know whether he has been denied access to any particular Web site(s) or any other information on the Internet during his research at a public library as a result of the installation and operation of a content filter.
44. Mr. Weinberg does not know which technology protection measure the library will install, or how the library will implement it, should the library seek to comply with CIPA's conditions.

## THE MULTNOMAH PLAINTIFFS

### Connecticut Library Association

45. The Connecticut Library Association (CLA) is a not-for-profit professional organization of over 1,000 librarians, library staff, friends and trustees. CLA supports the principle of open, free and unrestricted access to information and ideas for all its patrons, regardless of the format in which they appear. Some of CLA's public member libraries receive either e-rate discounts or LSTA funds for the provision of public Internet access. The interests CLA seeks to protect in this litigation are germane to CLA's purposes.
46. The Hartford Public Library, which is a member of CLA, serves 165,000 people in Hartford, Connecticut through its central library and nine branches. The Hartford Public Library provides 90 public access Internet terminals, and provides Internet access and training to patrons.

### Maine Library Association (MLA)

47. The Maine Library Association (MLA), founded in 1892, is a not-for-profit association of libraries and persons interested in library work, with approximately 800 members. There are MLA members affiliated with all of Maine's 271 public libraries. It maintains an office in Augusta, Maine. The mission of MLA is to promote and enhance the value of libraries and librarianship, to foster cooperation among those who work in and for libraries, and to provide leadership in ensuring that the global information network is accessible to all citizens via their libraries. Some of MLA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access. The interests MLA seeks to protect in this litigation are germane to MLA's purposes.
48. As of 2001, MLA member libraries will receive e-rate funding through a consortium sponsored by the Maine State Library. Approximately 1200 sites will participate including about 270 public libraries and an additional 60-70 specialty libraries. In 2001-2002, 344 Maine libraries are receiving e-rate money for Internet access or internal connections in the total amount of \$275,336.60.
49. The consortium will provide networked access to the Internet for participating libraries through the UNET system server at the University of Maine. Both state and e-rate funds will be used to support the network so that access for individual libraries will be essentially free.
50. The Auburn Public Library is a member of MLA and serves the town of Auburn, Maine, with a population of over 24,000. It provides five Internet access terminals to the public. The Auburn Public Library uses privacy screens and provides preselected links for children and teens to assist patrons in finding appropriate material and avoiding content they might find offensive.

51. The Portland Public Library is a member of MLA serving over 70,000 library patrons in the city of Portland, Maine. It circulated over 600,000 items last year. The Library provides fifty public access Internet terminals through its Main Library and five branches.

#### Santa Cruz Public Library Joint Powers Authority

52. The Santa Cruz Public Library Joint Powers Authority ("Santa Cruz Public Library") is a city-county library system with ten branch libraries and a bookmobile serving all of Santa Cruz County, California with the exception of the City of Watsonville, which maintains its own library.
53. Almost 1.5 million items were checked out of the Santa Cruz Public Library during 1999-2000. The Santa Cruz Public Library has about 162,000 registered borrowers, which is 76% of the Santa Cruz population of 213,600. In addition to borrowing books, patrons can take advantage of the library's free Spanish language courses, poetry writing workshops, chess classes, and volunteer tax advice.
54. The Santa Cruz Public Library has provided Internet access to patrons through a server-based and networked system since 1997. It currently provides 68 terminals throughout the system that are accessible to the public (and maintains 299 terminals that provide Internet access in total). The library estimates that the terminals are in constant use and that approximately 68,000 patrons per week use the terminals for Internet access.
55. The Santa Cruz Public Library provides new Internet users with an online set of tutorials and other information about search strategies. The Library maintains its own Web site, and has a Savvy Search page that instructs patrons in search methods. The Santa Cruz Public Library also offers a "Kids Page" which is a link of sites of interest to children.
56. The Library does not offer or provide blocking software.
57. In 2001-02, the Santa Cruz Public Library received \$20,560 through the e-rate program for Internet access and internal connections. In 2001-2002, it has been approved to receive \$42,000.

#### Westchester Library System

58. Plaintiff Westchester Library System (WLS) is a cooperative library system providing services to all 38 public libraries in Westchester County, New York. Its headquarters are in Ardsley, New York. In 1999, library patrons made over five million visits to the member libraries of WLS.
59. WLS provides operational and managerial support for WESTLYNX, which contains the County's online library catalog, circulation and database, and is the gateway for librarians, staff, and library patrons to access the Internet. There are 661 total Internet access terminals in the Westchester Library System, with 343 computers reserved for free

public use.

60. The WLS home page directs children to a special Web site “Just for Kids,” which begins with a link about child safety on the Internet. WLS also provides support for member libraries to offer Internet classes. Some WLS member libraries and WLS itself have Internet usage policies.

#### Wisconsin Library Association (WLA)

61. Plaintiff Wisconsin Library Association (WLA) is a not-for-profit professional, voluntary organization that serves approximately 2000 members who are libraries, librarians, library staff and friends of the library. It maintains an office in Madison, Wisconsin.
62. Some of WLA’s public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access. The interests WLA seeks to protect in this litigation are germane to WLA’s purposes.
63. The Middleton Public Library is a WLA member in Dane County, Wisconsin, which serves approximately 7,500 library patrons each week. The Middleton Public Library maintains four public and six staff computers that provide free access to the Internet to over 350 people each week. Library staff also use the Internet extensively to answer reference questions and to provide instruction to patrons.
64. The Middleton Public Library has created and maintains its own homepage for access to library resources for its patrons and others. It also offers suggestions and guidelines for Internet users, including search suggestions with tips for effective research, and a policy outlining the “Responsibility of Users” of the Internet.
65. The Middleton Public Library has not installed blocking software on any of the ten computers in the library.

#### Sherron Dixon, By Her Father and Next Friend Gordon Dixon

66. Plaintiff Sherron Dixon is a sixteen-year-old who lives in Philadelphia, Pennsylvania and is a junior at Mathematics Civics and Sciences Charter School in Philadelphia. She is a patron of the West Oak Lane Branch of the Philadelphia Free Library.
67. Ms. Dixon does not have a computer at home. She currently browses or conducts research at the West Oak Lane Library at least once a week and uses the Internet at the library at least once every two weeks. Ms. Dixon uses the Internet primarily in response to school assignments. Recently, she has researched issues relating to sexually transmitted diseases and breast cancer.
68. To the best of Ms. Dixon's knowledge, the library she uses does not currently use content filters. To the best of her knowledge, in the course of her research at the library, Ms.



Dixon has not been denied access to any particular Web site(s), or any other information available on the Internet, as a result of the installation and operation of a content filter.

69. Ms. Dixon does not know whether the library she currently utilizes will agree to accept the conditions imposed by CIPA on libraries that choose to accept either universal service discounts or LSTA funds. Nor does Ms. Dixon know which technology protection measure the library will install, or how the library will implement it, should the library choose to accept CIPA's conditions.

James Geringer

70. Plaintiff James Geringer lives in Portland, Oregon and uses the Multnomah County Public Library. He has also used the library with his two children, including in particular the Central Library in downtown Portland.
71. Although Mr. Geringer has Internet access at home and at work, he also uses the Internet at the Central Library.
72. Most recently, Mr. Geringer has used the Internet at the Central Library to research steganography, encryption, computer security, censorship, copyright infringement and fair use, and the “anti-trafficking” and “anti-circumvention” provisions of such statutes as the Audio Home Recording Act and the Digital Millennium Computer Act.
73. Mr. Geringer takes his children to the library approximately every month or two. While there, his children often use the library’s computers. His second-grade son, in particular, has used the Internet at the library to research topics in connection with his work in school, as well as such other topics as art, music, Japanese society, and Japanese-American history.
74. To the best of Mr. Geringer's knowledge, content filters are optional at the library he currently uses.
75. Mr. Geringer does not know whether the library he currently utilizes will agree to accept the conditions imposed by CIPA on libraries that choose to accept either universal service discounts or LSTA funds. Nor does Mr. Geringer know which technology protection measure the library will install, or how the library will implement it, should the library choose to accept CIPA's conditions.

Marnique Tynesha Overby, By Her Next Friend Carolyn C. Williams

76. Plaintiff Marnique Tynesha Overby is a fifteen-year-old freshman at Overbrook High School in Philadelphia, Pennsylvania. She uses the Internet at the West Philadelphia Regional Branch of the Free Library of Philadelphia approximately every two weeks.
77. Ms. Overby uses the Internet at the West Philadelphia Library primarily for school

projects and homework assignments. She has researched Black History, looking up Web sites with information that ranges from biographies on Martin Luther King and Harriet Tubman, to the goals and undertakings of the Southern Christian Leadership Conference and the NAACP. She has researched more general subjects within history and found Langston Hughes poetry for her English class.

78. Because Ms. Overby does not have Internet access from home, she accesses the Internet through the free Internet access provided to all library patrons at the West Philadelphia Library.
79. To the best of Ms. Overby's knowledge, the library she visits does not use content filters. To date, in the course of her research at the library, Ms. Overby has not been denied access to any particular Web site(s), or any other information available on the Internet, as a result of the installation and operation of a content filter.
80. Ms. Overby does not know whether the library she currently utilizes will agree to accept the conditions imposed by CIPA on libraries that choose to accept either universal service discounts or LSTA funds. Nor does Ms. Overby know which technology protection measure the library will install, or how the library will implement it, should the library choose to accept CIPA's conditions.

#### William J. Rosenbaum

81. Plaintiff William J. Rosenbaum lives in Winthrop, Maine and uses the Bailey Public Library. He currently visits the Bailey Public Library two to three times per week and accesses the Internet each time. Mr. Rosenbaum occasionally accompanies his thirteen-year-old and fifteen-year-old daughters to the library.
82. Mr. Rosenbaum conducts a variety of searches on the Internet at the Bailey Public Library. Most recently, he has researched heart disease and heart healthy recipes, and has read online news articles about protecting children on the Internet. He also has done general research on genealogy. In addition, he has helped his daughters conduct Internet research for school projects.
83. Neither Mr. Rosenbaum nor his children use filtered Internet terminals at the library. To date, in the course of conducting research at the library, Mr. Rosenbaum and his children have not been denied access to any particular Web site(s), or any other information available on the Internet, as a result of the installation and operation of a content filter.
84. Mr. Rosenbaum does not know whether the library he currently utilizes will agree to accept the conditions imposed by CIPA on libraries that choose to accept either universal service discounts or LSTA funds. Nor does Mr. Rosenbaum know which technology protection measure the library will install, or how the library will implement it, should the library choose to accept CIPA's conditions.

Carolyn C. Williams

85. Plaintiff Carolyn C. Williams lives in Philadelphia, Pennsylvania. Ms. Williams currently uses the Passyunk Branch of the Free Library of Philadelphia, where she accesses the Internet approximately twice a month. Most of her research on the Internet is designed to help her grandchildren on education-related assignments. These school assignments and the resulting Internet research ranges from history projects about the Middle Ages to science projects on how to grow mold.
86. Ms. Williams does not have Internet access from home.
87. The library Ms. Williams and her grandchildren use does not utilize content filters. To date, in the course of conducting research at the library, Ms. Williams and her grandchildren have not been denied access to any particular Web site(s), or any other information available on the Internet, as a result of the installation and operation of a content filter.
88. Ms. Williams does not know whether the library she currently utilizes will agree to accept the conditions imposed by CIPA on libraries that choose to accept either universal service discounts or LSTA funds. Nor does Ms. Williams know which technology protection measure the library will install, or how the library will implement it, should the library choose to accept CIPA's conditions.

Quiana Williams, By Her Mother and Next Friend Sharon Bernard

89. Plaintiff Quiana Williams is fifteen years old and lives in Philadelphia, Pennsylvania, where she attends Mathematics Civics and Sciences Charter School. She uses the Cobbs Creek Branch of the Philadelphia Free Library approximately once a week and uses the Internet every time she is there.
90. In response to assignments from school, she has recently done Internet searches for information on sexually transmitted diseases, breast cancer and prostate cancer.
91. Ms. Williams does not own a computer or have access to a computer at home.
92. To the best of Ms. Williams' knowledge, the library that she visits does not currently use content filters. To the best of her knowledge, in the course of her research at the library, Ms. Williams has not been denied access to any particular Web site(s), or any other information available on the Internet, as a result of the installation and operation of a content filter.
93. Ms. Williams does not know whether the library she currently utilizes will agree to accept the conditions imposed by CIPA on libraries that choose to accept either universal service discounts or LSTA funds. Nor does Ms. Williams know which technology protection measure the library will install, or how the library will implement it, should the library

choose to accept CIPA's conditions.

#### The Alan Guttmacher Institute

94. The Alan Guttmacher Institute ("AGI") has a Web site which contains information about its activities and objectives including its mission to protect the reproductive choices of women and men.
95. AGI provides on its Web site information about its organization and its program to inform individual decision-making, encourage scientific inquiry, enlighten public debate and promote the formation of sound public and private sector programs and policies. AGI's site also contains research articles and analyses providing information on sexual activity, contraception, abortion and childbearing.

#### Ethan Interactive, Inc. d/b/a Out In America

96. Plaintiff Ethan Interactive, Inc., d/b/a Out In America ("OutInAmerica") is an online content provider that owns and operates 64 free Web sites for gay, lesbian, bisexual and transgendered persons worldwide.
97. OutInAmerica's national Web site primarily provides chat room services including private chats and structured chats on a variety of topics including bisexual support and the difficulties of being "out" to one's family.
98. On its Web sites targeted to specific cities, OutInAmerica provides chat rooms, news, travel, entertainment and health information.

#### The Naturist Action Committee

99. Plaintiff the Naturist Action Committee (NAC) is the nonprofit political arm of The Naturist Society, a private organization with 27,000 members that promotes a way of life in harmony with nature, characterized by the practice of nudity, with the intention of encouraging body acceptance, self-respect, respect for others and respect for the environment.
100. The NAC Web site provides information about The Naturist Society activities, and about state and local laws that may affect the rights of Naturists or their ability to practice Naturism. Some of the sections of the NAC Web site include photographs of its members practicing Naturism (i.e., being nude).

#### Wayne L. Parker

101. Plaintiff Wayne L. Parker resides in Perkinston, Mississippi, and was the Libertarian candidate in the 2000 U.S. Congressional election for the Fifth District of Mississippi. He is the current Vice Chair of the Libertarian Party of Mississippi. He publishes a Web

site that communicates information about his campaign, and that provides information about his political views and the Libertarian Party to the public.

102. In addition to presenting his campaign platform and biography, Mr. Parker's Web site includes his commentary about various political issues, including statements entitled "Elián Gonzalez: A Picture Speaks A Thousand Words," "The Holocaust: More Than Just Racism," "Government Monopoly Over Education," and "Civil Rights: Confusing Means With Ends," among others. The site also includes a listing of quotes and Web links that are related to Mr. Parker's libertarian beliefs.

#### Planned Parenthood Federation of America, Inc.

103. Planned Parenthood Federation of America, Inc. ("Planned Parenthood") is a national voluntary organization in the field of reproductive health care. Planned Parenthood owns and operates several Web sites that provide a range of information about reproductive health, from contraception to prevention of sexually transmitted diseases, to finding an abortion provider, to information about the drug mifepristone.
104. Planned Parenthood is a non-profit corporation that is incorporated in New York and has its principal place of business in New York City.
105. Planned Parenthood's Web site includes illustrations of how to place a condom on a penis, and of male and female genitalia. It frequently employs vernacular terminology, such as "cum" referring to semen or ejaculation.
106. Planned Parenthood's Web site also provides an e-mail service. Through this service, users can address questions to, and receive responses from, Planned Parenthood on subjects such as abortion, contraception, prevention of sexually transmitted diseases, and sexuality.

#### PlanetOut Corporation

107. Plaintiff PlanetOut Corporation ("PlanetOut") is an online content provider for gay, lesbian, bisexual and transgendered persons. It is a for-profit corporation that is incorporated in Delaware and has its principal place of business in San Francisco, California.
108. PlanetOut provides on its Web site a variety of information and services of interest to the gay, lesbian, bisexual and transgendered community. For example, PlanetOut provides national and international news, including stories written by its own correspondents, and information regarding travel, finance, shopping, and entertainment. PlanetOut also offers an online radio show hosted by sex adviser Malcolm McKay on topics such as "Difficulties Using Condoms," chat rooms such as "The Steam Room," and discussion groups such as "Lesbian Libido" in which frank sexual exchanges may be involved.

109. PlanetOut's mission includes providing an online community for gay and lesbian teenagers.

Jeffrey Pollock

110. Plaintiff Jeffrey Pollock resides in Portland, Oregon, and was the Republic candidate in the 2000 U.S. Congressional election for the Third District of Oregon. He operates a Web site which is now promoting his candidacy for Congress in 2002.
111. Mr. Pollock uses his Web site to present his campaign platform, issue statements, and provide information about his opponent's voting record.

SaferSex.org

112. Plaintiff Safersex.org is a Web site that offers free educational information on how to practice safer sex. Safersex.org is operated out of Santa Monica, California.
113. Safersex.org publishes information about safer sex, HIV and other sexually transmitted diseases, condoms, and unwanted pregnancy. The information, which includes graphics, audio, and video, is indexed to facilitate research and retrieval.
114. The information and discussions on safersex.org include language and pictures concerning human anatomy, including male and female genitalia. Postings include guidelines about the risks associated with different sexual acts.

**THE NATURE AND OPERATION OF THE E-RATE PROGRAM**

115. In the Telecommunications Act of 1996 ("1996 Act"), Congress directed the Federal Communications Commission ("Commission") to take the steps necessary to establish a system of support mechanisms to ensure the delivery of affordable telecommunications service to all Americans. This system is referred to as "universal service," and it is codified in section 254 of the Communications Act of 1934, as amended by the 1996 Act. Congress specified several groups as beneficiaries of the universal service support mechanism, including consumers in high-cost areas, low-income consumers, schools and libraries, and rural health care providers. 47 U.S.C. § 254. The extension of universal service to schools and libraries in section 254(h) is commonly referred to as the Schools and Libraries Program, or "E-rate."
116. Under the Schools and Libraries Program, "[a]ll telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service . . . , provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties." 47 U.S.C. § 254(h)(1)(B).
117. The Commission, which oversees the universal service program as a whole, including the

Schools and Libraries Program, has designated a private corporation, the Universal Service Administrative Company ("USAC"), as the administrator of the program and of the Universal Service Fund, from which disbursements are made in support of the program. See 47 C.F.R. § 54.701. USAC is a private, not-for-profit corporation and an independent subsidiary of the National Exchange Carrier Association ("NECA").

118. USAC operates under the supervision of the Commission. USAC may not make policy, interpret statutory or regulatory provisions, or interpret the intent of Congress. Where such clarification is needed, USAC must seek guidance from the Commission. 47 C.F.R. § 54.702(c).
119. Within USAC, the Schools and Libraries Division ("SLD") is responsible for the day-to-day administration of the Schools and Libraries Program. The Schools and Libraries Committee of the USAC Board of Directors oversees SLD's administration of the program.
120. Under the Commission's rules, an individual representing eligible libraries serves as a member of the USAC Board of Directors and of the Schools and Libraries Committee of the USAC Board. See 47 C.F.R. §§ 54.703(b)(8), 54.705(a)(2)(ii). USAC participates in biweekly conference calls with the E-Rate Task Force ("ERTF"), a unit of the American Library Association ("ALA"), for the purpose of discussing issues relating to the administration of the Schools and Libraries Program. SLD personnel also attend meetings of the ALA twice annually and participate at those meetings in sessions organized by the ERTF.
121. Under Commission regulations, providers of "interstate telecommunications" (with certain exceptions, see 47 C.F.R. § 54.706(d)), must contribute a portion of their revenue to the Universal Service Fund for disbursement among eligible carriers that are providing services to those groups or areas specified by Congress in section 254. Telecommunications providers required to contribute to the fund receive bills from USAC and their assessments are based on their interstate and international end-user telecommunications revenues.
122. The required contributions made by telecommunications providers are maintained in the Universal Service Fund by USAC. USAC may collect and disburse money from the Universal Service Fund only in accordance with Commission rules and orders.
123. Pursuant to the Commission's directive, the schools and libraries portion of the universal service program is limited to \$2.25 billion in disbursements per funding year. 47 C.F.R. § 54.507(a). A funding year for purposes of the cap is the period July 1 through June 30.
124. Under the universal service program, eligible applicants may purchase three categories of services at discounted rates: telecommunications services, Internet access, and internal connections. Eligible services range from basic local and long distance telephone services, and Internet access services, to installation and maintenance of equipment to

provide internal connections.

125. In Funding Year 1 of the Schools and Libraries Program (January 1, 1998 – June 30, 1999), 30,120 applications seeking E-rate discounts with respect to all three categories of service were filed by schools and libraries across the country. As of January 31, 2002, 24,965 applications, totaling more than \$1.7 billion, were funded. Of this total, libraries and library consortia received 3.84% of the available discounts (\$65.7 million), and consortia comprised of schools and libraries received less than 15 percent (\$251.8 million).
126. In Funding Year 2 (July 1, 1999 to June 30, 2000), more than 32,000 applications were filed by schools and libraries across the country, requesting approximately \$2.435 billion in E-rate discounts with respect to all three categories of service. As of January 31, 2002, 29,969 applications, totaling more than \$2.1 billion, were funded. Of this total, libraries and library consortia received 3.06% of the available discounts (\$65.4 million), and consortia comprised of schools and libraries received less than 14.2 percent (\$302 million).
127. In Funding Year 3 (July 1, 2000 to June 30, 2001), more than 36,000 applications were filed by schools and libraries across the country, requesting approximately \$4.72 billion in E-rate discounts with respect to all three categories of service. As of January 31, 2002, 26,426 applications, totaling more than \$2.08 billion, were funded. Of this total, libraries and library consortia received 3.17% of the available discounts (\$66 million), and consortia comprised of schools and libraries received less than 10 percent (\$201.8 million).
128. In Funding Year 4 (July 1, 2001 – June 30, 2002), more than 35,300 applications were filed by schools and libraries across the country, requesting approximately \$5.2 billion in E-rate discounts with respect to all three categories of service. As of February 7, 2002, January 31, 2002, 26,919 applications, totaling more than \$2.1 billion, had been funded. Of this total, libraries and library consortia received 2.74% of the available discounts (\$58.5 million), and consortia comprised of schools and libraries received less than 10 percent (\$211 million).
129. Because this litigation is limited to plaintiffs' challenge to the conditions placed on funding available to libraries, the following stipulations describing the operation of the discounts available under the Schools and Libraries Program are limited to a discussion of its operation with respect to libraries.
130. The Commission's regulations, at 47 C.F.R. Part 54, Subpart F ("Universal Service Support for Schools and Libraries"), prescribe the conditions under which libraries receive E-rate discounts. To be eligible for the discounts, a library must (1) be eligible for assistance from a State library administrative agency under the Library Services and Technology Act, (2) be funded as an independent entity, completely separate from any schools, and (3) not be operating as a for-profit business. 47 C.F.R. § 54.501(c).



131. The Commission encourages eligible libraries to aggregate their demand with others to create consortia with sufficient demand to attract competitors and negotiate lower rates. Eligible libraries may aggregate demand with other eligible schools and libraries, rural health care providers, public sector (governmental) entities, and/or private sector entities. Various rules apply regarding the nature of the discounts that can be received by eligible libraries depending upon the nature of the members of the consortia they choose to join. Record-keeping responsibilities are placed on consortia leaders in order to ensure that only eligible entities receive discounts.
132. Only a telecommunications carrier, as defined in 47 U.S.C. § 153(44) and (46), may provide discounted telecommunications services to eligible libraries. See 47 C.F.R. §§ 54.501. Either a telecommunications carrier or a service provider that is not a telecommunications carrier may provide discounted Internet access and discounted installation and maintenance of internal connections to eligible libraries. See 47 C.F.R. §§ 54.501, 54.502, 54.517; see also In the Matter of Federal-State Joint Board on Universal Service, Report and Order, in CC Docket No. 96-45, FCC 97-157 (May 8, 1997) (hereinafter "Universal Service Order"), ¶ 599.
133. The Universal Service Order and other substantive orders issued by the Commission pertaining to the administration and operation of the universal service program generally, or its Schools and Libraries Program component specifically, may be changed or amended in administrative notice and comment proceedings subject to the provisions of the Administrative Procedure Act, 5 U.S.C. § 551 et seq. A Notice of Proposed Rulemaking relating specifically to the Schools and Libraries Universal Support Mechanism is currently pending, with public comments due to be filed in April 2002. See Notice of Proposed Rule Making and Order, In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, 67 Fed. Reg. 7327 (Feb. 19, 2002).
134. The Schools and Libraries Program is designed to provide libraries with maximum flexibility to purchase the services or combination of services that they believe will meet their needs effectively and efficiently. Universal Service Order, ¶ 29. Because the Commission seeks to ensure that libraries have maximum flexibility to purchase different packages of services at discount rates, the Commission did not recommend a standard telecommunications package, but, instead, concluded that it would be more efficient to let libraries determine what services they need and want. Eligible libraries may select both the technology and the provider that best meets their needs.
135. Currently, libraries may receive discounts only for "basic 'conduit' access to the Internet," which includes electronic mail (e-mail). Discounts do not apply to the "content" that some information service providers bundle in a package with Internet access. Universal Service Order, ¶ 436; see id. ¶ 445 (E-rate program will "grant schools and libraries discounts on access to the Internet but not on separate charges for particular proprietary content or other information services"). The treatment of bundled content is one of the

subjects of a Notice of Proposed Rulemaking issued by the Commission, see 67 Fed. Reg. 7327 (Feb. 19, 2002), to which public comments are due in April 2002.

136. With respect to discounts for internal connections, a service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more non-administrative buildings that comprise a single library branch. Both installation and maintenance of internal connections are eligible for discounts.
137. Equipment such as computers (with the exception of certain servers) and other hardware, software (with the exception of software required for the operation of network file servers), fax machines, teacher training, upgrades to the electrical system, and asbestos removal are not eligible for discounts.
138. Currently, USAC is charged with determining whether particular services fall within the eligibility criteria established under the 1996 Telecommunications Act and Commission rules and orders. USAC evaluates, on an ongoing basis, particular services offered by service providers and determines their eligibility. In order to provide applicants with general guidance, USAC periodically issues a list that sets forth the various services that are eligible for discount and some of the conditions that attach to their eligibility. The most recent version of this "Eligible Services List" is available on USAC's Website, <http://www.sl.universalservice.org>. The Commission retains the authority to revise service eligibility determinations. USAC Program Description, at 11. The process for making service eligibility determinations and the determinations made with respect to certain specified services are among the subjects of a Notice of Proposed Rulemaking issued by the Commission, see 67 Fed. Reg. 7327 (Feb. 19, 2002), to which public comments are due in April 2002.
139. Discounts on eligible services for eligible libraries are set as a percentage of the pre-discount price. Pre-discount price means the price that the service provider agrees to accept as total payment for its telecommunications or information services. Discount percentages range from 20 percent to 90 percent, depending on a library's level of economic disadvantage and its location in an urban or rural area. See 47 C.F.R. § 54.505.
140. Currently, a library's level of economic disadvantage is based on the percentage of students eligible for the national school lunch program in the school district in which the library is located. A library system which orders services on behalf of its branches and which has branches located in different school districts calculates its discount percentage by determining the discount to which each of the school districts in which its branches are located is entitled. The library system then adds the discount percentages for all branches and divides by the number of branches, which will yield the system-wide discount percentage.
141. School lunch eligibility data measures the percentage of students within 185 percent of the poverty line. Universal Service Order, ¶ 517.

142. The following matrix is used to set the discount rate to be applied to eligible interstate services purchased by eligible schools, school districts, libraries, or library consortia:

% of students eligible for national school lunch program	Discount Level	
	Urban discount	Rural discount
<1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

143. For purposes of determining the applicable discount under the schools and libraries discount program, rural areas are defined in accordance with the definition adopted by the Department of Health and Human Services' Office of Rural Health Policy ("ORHP/HHS"). ORHP/HHS uses the Office of Management and Budget's Metropolitan Statistical Area designation of metropolitan and non-metropolitan counties, adjusted to reflect large rural areas within large metropolitan counties.
144. Even if a library is deemed eligible for universal service discounts on eligible services, it may not receive discounts in any given funding year due to overall funding shortfalls. In Year 4, USAC estimates that more than \$1.3 billion, and perhaps as much as \$1.5 billion, in funding requests may not be fulfilled due to lack of funds.
145. In those funding years in which requests for discounts exceed the amount of available funds, the Commission applies its priority rules in an effort to ensure that the most disadvantaged applicants obtain the greatest benefits from the E-rate support mechanism, while also honoring the needs of other applicants. Under the Commission's priority rules for timely applications, funds will be allocated for all approved requests for telecommunications services and Internet access as a first priority. Remaining funds are allocated for internal connections as a second priority. Among the requests for internal connections, the applicants in the highest need category (those qualifying for the greatest discounts) are first allocated funds, continuing to the progressively less needy, as long as funds remain available.
146. The priority rules were applied in Funding Years 1 and 3 of the program to determine which requests to fund in light of funding shortfalls. In Year 1, due to the constraints of available funds, internal connections requests were funded only through the 70% discount band. Libraries and schools which sought funding for internal connections in discount bands lower than 70% did not receive approved commitments for those requests. In Year 3, internal connections requests were funded only through the 82% discount band.

Libraries and schools which sought funding for internal connections in discount bands lower than 82% did not receive approved commitments for those requests. In Year 2 of the program, internal connections requests were fully funded.

147. To apply for universal service discounts, libraries submit a three-stage application consisting of: FCC Form 470 (Description of Services Requested and Certification); FCC Form 471 (Services Ordered and Certification); and FCC Form 486 (Receipt of Service Confirmation). Each of these forms and the instructions for completing them are available on USAC's website.
148. Before receiving discounts, each participating library seeking discounts for services other than basic telephone service must develop a technology plan. The technology plan describes how the libraries intend to integrate the use of the requested technology services into their educational programs or curricula. A library's technology plan must be approved by its state or an independent entity certified by USAC before the library files the FCC Form 486 (Receipt of Service Confirmation) and begins receiving services at discounted rates. Libraries applying only for basic local and long distance telephone service are not required to have technology plans.
149. The first step in the application process for universal service discounts is the filing of the FCC Form 470 (Description of Services Requested and Certification). Applicants must characterize the type of service the applicant is seeking, whether telecommunications services, Internet access, or internal connections. USAC Program Description, at 12.
150. FCC Form 470 must be signed by the person authorized to order the telecommunications and other supported services and must include the following certifications: (1) that the library is an eligible entity as defined by the Communications Act and the Commission's rules; (2) that the discounted services requested will be used solely for educational purposes; (3) that the discounted services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) that, if required, the applicant has developed a technology plan.
151. The posting of the FCC Form 470 on USAC's web site launches a 28-day competitive bidding period, during which service providers may contact the applicant to bid on the requested services. Competitive bidding is a requirement of participation in the Schools and Libraries Program. Each applicant must wait at least 28 days from the date of the posting of the FCC Form 470 before signing any contract or making other arrangements for new services.
152. At the end of the 28-day competitive bidding process, applicants may select the service provider(s) that will provide the services they have requested. Price must be the primary consideration in choosing a service provider, although other criteria may be included such

as: service quality, prior experience, personnel qualifications, management capability, and schedule compliance, thus leading to the most cost-effective solution. Generally, once the service provider is selected, a contract should be executed; however, discounts are not guaranteed until all service requests are reviewed and approved by USAC.

153. Once service providers have been selected and contracts executed, applicants for universal service discounts must file the FCC Form 471 (Services Ordered and Certification) pursuant to the time deadlines established by USAC .
154. Applicants must certify on the FCC Form 471 that (1) they have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charge for eligible service; and (2) that they have complied with all applicable state and local procurement laws.
155. Libraries applying for universal service discounts must also certify the percentage of students within the relevant district that are eligible for the national school lunch program. Library systems may compute their discount percentage on an individual institution basis or they may decide to compute an average discount. In either case, the library system must certify that the most disadvantaged libraries within the system will receive the appropriate share of the discount to which they are independently entitled. Universal Service Order, ¶ 525.
156. The Schools and Libraries Program is a self-certification program. Authorized representatives of applicants for benefits under the program who willfully make false statements on official forms during any phase of the application process may be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001.
157. Once funding requests on the FCC Form 471s are reviewed by USAC, USAC issues a Funding Commitment Decision Letter ("FCDL"), which is the written communication to applicants advising them of the level of discount funding that has been allocated for their eligible services. Each service requested is assigned a separate Funding Request Number ("FRN") and is approved or disapproved individually. USAC also notifies service providers of the funding commitment decisions.
158. Applicants' receipt of funding commitments from USAC is contingent on applicants' compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. All applicants must maintain adequate records. Applicants who have received funding commitments from USAC are subject to random compliance audits and other reviews that USAC or the Commission may undertake periodically to assure that funds have been committed and are being used in accordance with program rules.

159. To date, no library's application for universal service discounts has been denied on the basis of the Commission's evaluation of the content of the Internet access provided by the library.
160. To date, no library has been denied universal service discounts because the Internet access provided by the library did not meet the "educational purposes" requirement of 47 U.S.C. § 254(h)(1)(B).
161. Libraries that are approved for discounts under the program must file FCC Form 486 (Receipt of Service Confirmation Form), as an indication that services have begun or that the applicant has confirmed with the service provider that they will begin in the first month of the funding year. The filing of the FCC Form 486 allows USAC to process service provider invoices for the discounts.
162. Libraries that are approved for universal service discounts receive either a discount off their bill and pay only a portion of their bill when due or pay their entire bill and receive a reimbursement for the amount overpaid from their telecommunications provider. The mechanics of the payment and reimbursement process are among the subjects of a Notice of Proposed Rulemaking issued by the Commission, see 67 Fed. Reg. 7327 (Feb. 19, 2002), to which public comments are due in April 2002.
163. In those cases where a library has paid an eligible service provider the full pre-discount price for an eligible service, the library may submit a Billed Entity Applicant Reimbursement form (FCC Form 472), signed by the applicant and service provider, for reimbursement of the discounted portion of the pre-discount price. After processing the form, USAC remits the discounted portion to the service provider, which then pays the applicant. The mechanics of the payment and reimbursement process are among the subjects of a Notice of Proposed Rulemaking issued by the Commission, see 67 Fed. Reg. 7327 (Feb. 19, 2002), to which public comments are due in April 2002.
164. USAC, and specifically SLD, is tasked with monitoring the Schools and Libraries Program for waste, fraud and abuse by school and library applicants and participating service providers. In fulfilling this mandate, USAC and its components are subject to the oversight of both the Commission and the federal General Accounting Office ("GAO").
165. If SLD determines that its funding commitment to an applicant was erroneously issued, SLD may be required to cancel the funding commitment and seek repayment of any funds that have been disbursed in error. This process is known as Commitment Adjustment ("COMAD"), and both the Commission and USAC have established procedures to guide their actions in the circumstances where a COMAD is required.

166. All decisions of SLD, including decisions to reduce or deny funding requests and decisions to adjust previously made commitments, are subject to appeal. Although parties wishing to challenge an SLD decision may file an appeal with SLD or directly with the Commission, parties are encouraged to file their appeal first with SLD. If an appeal to SLD is denied, the party may then appeal that denial to the Commission. Appeals to the Commission must be received within 60 days of the date on the SLD denial letter, or within 60 days of the date of the SLD's denial of the appeal. The timing of the appeals process is among the subjects of a Notice of Proposed Rulemaking issued by the Commission, see 67 Fed. Reg. 7327 (Feb. 19, 2002), to which public comments are due in April 2002.
167. In addition to the formal appeal process, the Commission retains the authority to review the decisions of SLD at any time on the Commission's own motion. Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579, 13 F.C.C.R. 11810 (1998), ¶ 14.
168. The Commission has delegated to its Common Carrier Bureau the authority to make decisions on routine appeals that do not raise new or novel issues. 47 C.F.R. § 54.722(a). Appeals which raise novel issues of fact, law or policy are decided by the full Commission. Whether an appeal is before the Common Carrier Bureau or the full Commission, the standard of review of SLD's decision is *de novo*.
169. Appeal decisions made by the Common Carrier Bureau may be appealed to the full Commission. 47 C.F.R. § 54.722(b). All final orders of the Commission concerning universal service matters may be appealed to the United States Courts of Appeals pursuant to 47 U.S.C. § 402(a) and the Hobbs Act, 28 U.S.C. § 2342(1).
170. As of January 1, 2002, the Commission had reviewed 740 appeals from SLD decisions. Of these, 592 were denied or dismissed, 135 were granted, and 13 were granted in part.
171. Each funding year, USAC sets aside a portion of the funds available for disbursement under the schools and libraries universal service support mechanism in an effort to ensure that sufficient funds will be available for any appeal for funding reductions or denials that may be granted by SLD or the Commission.
172. The Commission may, on motion or on its own motion, issue declaratory rulings terminating a controversy or removing uncertainty. 47 C.F.R. § 1.2.
173. The Children's Internet Protection Act ("CIPA") was enacted as part of the Consolidated Appropriations Act, 2001. See Pub. L. No. 106-554, 114 Stat. 2763 et seq. It was signed into law by the President on December 21, 2000.

174. CIPA addresses three distinct types of federal funding programs, including LSTA grants to states for support of libraries, see § 1712 (amending the Museum and Library Services Act, 20 U.S.C. § 9134), and that part of the E-rate program that makes discounts available to libraries. See § 1721(b) (amending the Communications Act of 1934, 47 U.S.C. § 254(h)). With respect to the E-rate program, CIPA's conditions apply only to those discounts allocated for Internet access and internal connections, and not to those discounts allocated for telecommunications services.
175. On April 5, 2001, following a public notice and comment proceeding, the Commission issued its Report and Order implementing the terms of CIPA. See 2001 WL 327640, No. FCC 01-120, CC No. 96-45 (April 5, 2001, as corrected April 16, 2001). Accompanying regulations were codified at 47 C.F.R. Part 54.
176. Pursuant to CIPA, Commission regulations, and guidance provided by USAC, libraries seeking E-rate funding for Year 4 of the Schools and Libraries Program generally were required to certify by October 28, 2001, that, as of the date of the start of discounted services in Funding Year 4, (a) they had complied with the requirements of CIPA; (b) they were undertaking such actions, including any necessary procurement measures, to comply with the requirements of CIPA for the next funding year, but had not completed all requirements of CIPA for this funding year; or (c) CIPA does not apply because the recipient of service is receiving discount funding solely for telecommunications services. No library that makes one of these certifications in Year 4 is committed to accepting universal service discounts in any subsequent funding year.
177. As of January 20, 2002, approximately 168 libraries, library branches, or library systems have certified to USAC that they had complied with the requirements of CIPA as of the date of the start of discounted services in Funding Year 4. Approximately 1442 libraries have certified that they were undertaking such actions, including any necessary procurement measures, to comply with the requirements of CIPA for the next funding year. The next funding year, Year 5, begins July 1, 2002. None of the approximately 1442 libraries that have certified in Year 4 that they were undertaking actions to comply with the requirements of CIPA by Year 5 is committed to accepting universal service discounts in Year 5 or any subsequent funding year.
178. Among those libraries that have certified that they had complied with the requirements of CIPA as of the start of discounted services in Funding Year 4 are members of some of the associations named as plaintiffs in this lawsuit. These include Pomona Public Library, CA (member of the California Library Association); The Connecticut Historical Society, CT (member of the Connecticut Library Association); Bethlehem Area Public Library, PA (member of the Freedom to Read Foundation); Elmont Public Library, NY (member of the Freedom to Read Foundation); Baker County Public Library, OR (member of the American Library Association through 12/01); Bloomfield Public Library, IA (member of the American Library Association through 12/01); Castroville Public Library, TX



(member of the American Library Association); Metropolitan Library System, OK (member of the American Library Association); San Bernardino County Library, CA (member of the American Library Association); San Juan Island Library, WA (member of the American Library Association); Sherman County Public Library, TX (member of the American Library Association); Tacoma Public Library, WA (member of the American Library Association); North Suburban District Library, IL (member of the Freedom to Read Foundation); and Twin Falls Public Library, ID (member of the Freedom to Read Foundation and the American Library Association). The Commission, to date, has not verified the statement made in any CIPA certification.

### **THE INSTITUTE OF MUSEUM AND LIBRARY SERVICES**

179. The Library Services and Technology Act ("LSTA"), Subchapter II of the Museum and Library Services Act, 20 U.S.C. § 9101, et seq., was enacted by Congress in 1996 as part of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208. Revisions to the statute were made by the Museum and Library Services Technical and Conforming Amendments of 1997, Pub. L. No. 105-128, enacted December 1, 1997.
180. The general, broad purposes of the LSTA are (1) to consolidate federal library service programs; (2) to stimulate excellence and promote access to learning and information resources in all types of libraries for individuals of all ages; (3) to promote library services that provide all users access to information through State, regional, national and international electronic networks; (4) to provide linkages among and between libraries; and (5) to promote targeted library services to people of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to people with limited functional literacy or information skills. 20 U.S.C. § 9121.
181. For purposes of the LSTA, the term "library" includes (1) a public library, (2) a public elementary or secondary school library, (3) an academic library, (4) a research library which makes publicly available library services and materials suitable for scholarly research not otherwise available to the public, and which is not an integral part of an institution of higher learning; and (5) a private library or other special library, but only if the State in which such private or special library is located determines that the library should be considered a library for these purposes. 20 U.S.C. § 9122(2).
182. Funding under the LSTA is determined by Congress on an annual basis and the LSTA itself is subject to review and re-authorization by Congress periodically, generally every five years.
183. The LSTA establishes three grant programs for the achievement of its purposes, including the Grants to States program; the Grants to support Native American and Native Hawaiian Library Services; and the National Leadership Grants program. 20 U.S.C. §§

9141 (States), 9161 (Native Americans), and 9162 (National Leadership Grants).

184. The annual allotment of LSTA program funds is as follows: 3.75% is allotted for National Leadership Grants; 1.75% is allotted for Grants to Native Americans and Native Hawaiians; and the remainder of the program funds are allotted to the Grants to States Program. 20 U.S.C. § 9131.
185. In the years from 1998 to 2002, nearly \$720 million has been appropriated under the LSTA Grants to States Program. Specifically, in 1998, \$135,466,990 was appropriated; in 1999, \$135,366,938 was appropriated; in 2000, \$138,118,000 was appropriated; in 2001, \$148,939,000 was appropriated; and, in 2002, \$149,014,000 was appropriated.
186. Under the Grants to States Program, LSTA grant funds are awarded in order to: (1) establish or enhance electronic linkages among or between libraries; (2) electronically link libraries with educational, social, or informational services; (3) assist libraries in accessing information through electronic networks; (4) encourage libraries in different areas, and encourage different types of libraries, to establish consortia and share resources, (5) pay costs for libraries to acquire or share computer systems and telecommunications technologies; and (6) target library and information services to persons having difficulty using a library and to underserved and rural communities, including children from families with incomes below the poverty line. 20 U.S.C. § 9141(a).
187. One focus of LSTA's funding efforts is to encourage the use of information technology in libraries. Thus, through its Grants to States program, for example, LSTA funds have been used to (1) automate internal library operations, such as materials selection and acquisition, card catalogs, and materials circulation services; (2) improve resource sharing among libraries by digitizing collection records and standardizing and automating lending procedures; (3) license electronic database collections; (4) explore the application of digital technologies to help preserve paper-based collections by converting them into digital form; (5) acquire and pay costs associated with Internet-accessible computers located in libraries; and (6) develop electronic or digital Government Information Locator programs which provide and consolidate access to federal, state and community information.
188. The allocation and processing of Federal funds for the Grants to States program is assigned to the Institute of Museum and Library Services ("IMLS"). IMLS was created in 1996 by the Museum and Library Services Act, 20 U.S.C. § 9101, et seq. IMLS is an independent, federal executive branch agency charged with administering, among other things, LSTA funding. IMLS consists of two program offices, the Office of Museum Services and the Office of Library Services.

189. Prior to the creation of IMLS, predecessor library grant programs similar to those authorized by the LSTA were administered by the United States Department of Education.
190. Under the Grants to States program, the LSTA authorizes the Director of IMLS to provide funds to State Library Administrative Agencies ("SLAAs"). 20 U.S.C. § 9133(a). A State's SLAA is "the official agency of [that] State charged by the law of the State with the extension and development of public library services throughout the State." 20 U.S.C. § 9122(5).
191. IMLS allots LSTA funds to 59 SLAAs – one in each of the fifty States and one in each of the following: the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. 20 U.S.C. § 9122(4).
192. Funds awarded under the Grants to States program are allotted to the SLAA through a population-based formula under which each State receives a minimum of \$340,000 and additional funds based on a ratio of the population of that State to the population of all States. 20 U.S.C. § 9131(b). The minimum allotment is \$40,000 in the case of the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. If the amount appropriated for LSTA funding in any given year is insufficient to satisfy the minimum allotments, each of the minimum allotments is reduced ratably. 20 U.S.C. § 9131(b)(3). To date, this provision has not been invoked.
193. Each State is responsible for matching the federal funds its SLAA receives. The federal share is 66 percent, with the remaining 34% to be provided from non-Federal, State or local sources. 20 U.S.C. § 9133.
194. States are also subject to a Maintenance of Effort ("MOE") requirement. 20 U.S.C. § 9133 (c). Under this requirement, IMLS is required to reduce the funding otherwise payable to an SLAA if the State fails to show a continued effort to fund library programs over time. This ensures that Federal assistance results in an increase in the level of funding activity and that a State does not simply replace State dollars with Federal dollars.
195. Under the LSTA Grants to States program, SLAAs have the responsibility to develop plans and to allocate and administer funds in accordance with their own identified needs and priorities within the purposes of the LSTA. IMLS has the responsibility to provide training and technical assistance regarding grant administration and to ensure that funds

are allocated and State programs are developed within the parameters of the LSTA and federal regulations.

196. In order to be eligible to receive funds under the Grants to States program, each State's SLAA must submit to IMLS a "State plan" for a five-year period. Such plans must be made available to the public. 20 U.S.C. § 9134.
197. Each State plan must: (1) establish goals and specify priorities for the State consistent with the purposes of the LSTA; (2) describe activities that are consistent with the goals and priorities established under the LSTA that the SLAA will carry out using its grant; (3) describe the procedures that the SLAA will use to carry out such activities; (4) describe the methodology that the SLAA will use to evaluate the success of such activities in achieving the goals and meeting the priorities described in the plan; (5) describe the procedures that the SLAA will use to involve libraries and library users throughout the State in policy decisions regarding implementation of the LSTA; and (6) provide assurances satisfactory to the Director of IMLS that the SLAA will make such reports, in such form and containing such information, as the Director of IMLS may reasonably require to carry out the LSTA and to determine the extent to which funds provided under the LSTA have been effective in carrying out the purposes of the statute. 20 U.S.C. § 9134(b).
198. The SLAA must provide the following assurances as part of the State Plan: (1) that the SLAA is the officially-designated State agency with the fiscal and legal authority and capability to administer all aspects of the LSTA; (2) that the State will establish the policies, priorities, criteria, and procedures necessary to the implementation of all programs under LSTA; (3) that the State Plan will be submitted to IMLS for approval; and (4) that the SLAA will spend no more than 4% of its LSTA grant on administrative costs. 20 U.S.C. §§ 9122(6) & 9132(a).
199. State plans further must include an "assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding." 45 C.F.R. § 1183.11(c). These assurances include assurances that federally-assisted programs funded with LSTA State Program grant monies will comply with all Federal statutes relating to discrimination including, inter alia, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1975, and with all other applicable requirements of other Federal laws, executive orders, regulations, and policies governing the program. Such assurances must be signed by the SLAAs.
200. SLAAs must also certify compliance with several other federal requirements as part of their submission of the required five-year plan. For example, any SLAA receiving over \$100,000 must certify that no federally-appropriated funds were paid by or on behalf of

the SLAA to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of the Federal grant. If any funds other than appropriated Federal funds have been or will be paid to any person for such purposes, the SLAA must disclose such lobbying activities in accordance with federal law. SLAAs must also certify that they maintain a drug-free workplace and must have a written policy that informs employees that the unlawful possession, distribution or manufacture of a controlled substance is prohibited, and must specify the action that will be taken for an employee's failure to comply. SLAAs must also certify that they are not delinquent in the repayment of any federal debt, have not been debarred from federal assistance programs, and have not been convicted of fraud.

201. The five-year State plan must be submitted to and approved by the Director of IMLS. IMLS Program Officers conduct reviews of five-year plans to ensure that they are consistent with the statutory requirements and provide satisfactory assurance that the provisions of the plans will be carried out. Each five-year State plan that, upon review, is determined to meet these criteria is approved by IMLS. 20 U.S.C. § 9134(e).
202. In the event that an SLAA submits an unsatisfactory five-year plan, the SLAA has the opportunity to revise the plan, and IMLS must provide the SLAA with technical assistance to aid the SLAA in meeting the eligibility requirements and provide the opportunity for a hearing. 20 U.S.C. § 9134(e)(3).
203. LSTA grant funds must be used for the goals and objectives identified in the LSTA five-year State plan that was approved by IMLS. Grant funds cannot be expended for any significant changes in the programs goals and objectives without prior IMLS approval. Any program amendments must be approved by IMLS in advance.
204. If an SLAA makes a substantive revision to its plan during the five-years, it must submit an amendment to the Director of IMLS no later than April 1 of the fiscal year preceding the fiscal year for which the amendment will be effective. 20 U.S.C. § 9134(a)(3).
205. SLAAs are given discretion and options in determining how to implement their five-year plans and how to provide services to the libraries and library users in their States. Specifically, an SLAA may apportion the funds as appropriate to meet the needs of the individual State and may either provide such services directly or through sub-grants or cooperative agreements. 20 U.S.C. § 9141(a).
206. In instances in which an SLAA provides direct services, the provision of such services must conform to the terms of the SLAA's five-year plan. SLAAs also may use competitive subgrants to distribute their LSTA funds and to meet the purposes set forth in the LSTA and their five-year plans. The form and substance of such subgrant programs

are left to the discretion of the SLAAs, provided that the programs conform to the purposes and terms of the five-year plan and the law of its State. 45 C.F.R. § 1183.37(a). SLAAs report general information to IMLS about their subgrant programs to the extent necessary to demonstrate compliance with the purposes of the LSTA and the provisions of each SLAA's five-year plan, but do not report detailed budget information regarding the projects supported.

207. SLAAs are responsible for managing the day-to-day operations of grant and subgrant supported activities. Each SLAA receiving LSTA funds under the Grants to States program must submit an annual report on LSTA-funded activities showing progress towards meeting the goals of the State plan. 45 C.F.R. § 1183.40(b)(1). Each subgrantee receiving assistance must submit to the SLAA any information the SLAA requires in order to make these reports. 20 U.S.C. § 9134(d).
208. Subgrants awarded by SLAAs under the LSTA carry the same legal and regulatory conditions as the grants to the SLAAs themselves. Under IMLS regulations, the SLAAs are responsible for ensuring that those conditions and others imposed by Federal law on grantees are included in all subgrants. 45 C.F.R. § 1183.37. Thus, for example, each library that accepts LSTA funds from its SLAA under a subgrant must ensure that its programs and activities, when viewed in their entirety, are readily accessible to and usable by qualified individuals with a disability under the federal Rehabilitation Act and the Americans with Disabilities Act. See 45 C.F.R. § 1180.44(d) (requiring compliance with 45 C.F.R. Part 1170). Similarly, any library that accepts LSTA funds from its SLAA under a subgrant must take reasonable steps to ensure meaningful access to federally-assisted activities and programs to persons with limited English proficiency as required by Title VI of the Civil Rights Act of 1964. 45 C.F.R. § 1110.3(b).
209. SLAAs are charged with monitoring compliance by subgrantees with all legal and regulatory conditions. 45 C.F.R. § 1183.40.
210. Compliance with the LSTA statutory provisions, the terms of the five-year plan, and other Federal laws and regulations applicable to SLAAs and their subgrantees is monitored by IMLS through annual reports submitted by each SLAA, routine contact between IMLS staff and SLAA staff, and periodic site visits conducted by IMLS staff. Approximately ten to fifteen site visits are conducted per year, with each State receiving a visit approximately every three to four years.
211. Because each of the fifty states and the District of Columbia receives at least \$340,000 in Grants to States program funds as a result of the minimum allotments set out in the LSTA, see 20 U.S.C. § 9131(b), each of these SLAAs must have an annual audit conducted by an independent auditor in accordance with the requirements of the Single Audit Amendments of 1996, 31 U.S.C. §§ 7501-7507 and OMB Circular No. A-133. As part of this audit, each SLAA must determine whether its subgrantees spent Federal

assistance funds in accordance with applicable laws and regulations and, in the event of instances of noncompliance, must ensure that the subgrantee takes appropriate corrective actions within six months of the audit report date. 45 C.F.R. § 1183.26(b)(2) & (3).

212. In the event that an SLAA is found materially to have failed to comply with any term of an award, whether stated in a Federal statute or regulation, in an assurance submitted by that SLAA, in a five-year State plan, in an award notice, or elsewhere, IMLS may withhold payment pending correction of the noncompliance, disallow costs associated with the noncompliant activity, wholly or partially suspend or terminate the current award, withhold further awards, or seek other remedies that are legally available. 45 C.F.R. § 1183.43. In taking any enforcement action, IMLS will provide the SLAA with an opportunity for such hearing, appeal, or other administrative proceedings as the SLAA is entitled to under the applicable statute or regulation. 45 C.F.R. § 1183.43 (b).
213. IMLS may also require SLAAs to ensure that their subgrantees meet all of the conditions associated with LSTA grants, may treat an SLAA's failure to do so as a failure to materially comply with LSTA Grants to States Program requirements, and may take appropriate enforcement actions against the SLAA in such instances.
214. All grant payments made by IMLS under the Grants to States program are made directly to the responsible SLAA.
215. Grant funds are ordinarily awarded for use during a two-year Grant Award period. Expenditures of grant funds for the purchase of items of equipment costing \$5,000 or more with more than two years of usable life are allowable only with prior IMLS approval.
216. Actual payment disbursements from a State's allotment for a given fiscal year are typically made on a reimbursement basis; in other words, an SLAA will periodically request reimbursement from IMLS for payments it has made pursuant to its five-year plan. Reimbursements are only made if expenses were properly made under the five-year plan and if the SLAA is in compliance with all of the terms of such plan, including reporting requirements.
217. The Children's Internet Protection Act ("CIPA"), as enacted, attaches conditions to the receipt of Grants to States program funds that are used to purchase computers to access the Internet and/or to purchase direct Internet access. Other LSTA funding programs and other uses of Grants to States program funds are not affected by CIPA. IMLS does not maintain specific data regarding the amount of LSTA funds awarded in any given year which was used by SLAAs or their subgrantees to purchase computers to access the Internet and/or to purchase direct Internet access.

218. The conditions that attach to LSTA program funds included in CIPA will apply to all program funds awarded beginning in October 2002 under the Grants to States Program that are used to purchase computers to access the Internet and/or to purchase direct Internet access. Each SLAA must certify to IMLS that LSTA funds will be used in accordance with CIPA's requirements.

### **NATURE OF THE INTERNET**

219. The Internet is a vast, interactive medium based on a decentralized network of computers around the world.
220. The information contained in these stipulations is valid as of the date of the stipulations, but is subject to change.
221. The Internet presents low entry barriers to anyone who wishes to provide or distribute information. Unlike television, cable, radio, newspapers, magazines or books, the Internet provides an opportunity for those with access to the Internet to communicate with a worldwide audience.
222. At least 400 million people use the Internet worldwide. According to the Department of Commerce, approximately 143 million Americans were using the Internet as of September 2001. A Nation Online: How Americans Are Expanding Their Use of the Internet (NTIA: February 2002).
223. The World Wide Web ("Web") is a network of computers, called "Web servers," which host "pages" of content accessible via the Hypertext Transfer Protocol or "HTTP." Anyone with a computer connected to the Internet can attempt to search for and retrieve information stored on remote Web servers.
224. Because the Web is decentralized, it is impossible to say exactly how large it is. A 2000 study estimated a total of 7.1 million unique Web sites, which at the Web's historical rate of growth, would have increased to 11 million unique sites as of September 2001. Estimates of the total number of Web pages vary, but a figure of 2 billion is a reasonable estimate of the number of Web pages that can be reached, in theory, by standard search engines.
225. Computer users typically access the Web by running a program called a "browser" on their computers. A "browser" displays, as individual pages on the computer screen, the various types of content found on the Web and lets the user follow the connections – called "hypertext links," or "hyperlinks," or "links" – built into Web pages to additional content. Two popular browsers are Microsoft Internet Explorer and Netscape Navigator.
226. A "Web page" is one or more files that are graphically assembled by a browser to make a viewable whole when a request is made for content over the Internet. A Web page may contain a variety of different elements, including text, images, buttons, form fields that



the user can fill in, and links to other Web pages.

227. A “Web site” is a term that can be used in several different ways. It may refer to all of the pages and resources available on a particular Web server. It may also refer to all the pages and resources associated with a particular organization, company or person, even if these are located on different servers, or in a subdirectory on a single server that they share with other, unrelated sites.
228. Typically, a Web site has a "home page" that appears first and includes links to other pages on the same Web site or to pages on other sites.
229. Generally, users must take affirmative steps to access content on the Web.
230. When accessed, some Web sites, in addition to displaying the page requested by the user, will also display content using “pop-up screens.” These pop-up screens open without prompting by the user. Whether pop-ups are used on a particular site, and what the content of any pop-ups might be, is a decision made by that site’s administrator. Pop-ups are most commonly used on commercial sites for advertisements, which may or may not be topically related to the content of the original web site.
231. Some sites will automatically open new windows that a user did not affirmatively take steps to access, or re-direct the user to a different site altogether.
232. Users may also accidentally access content they did not affirmatively or intentionally seek either by mistyping a Web address, or by typing a Web address for a site that contains content the user did not intend to access or expect to find, or both. The parties do not stipulate to the frequency of such incidents of accidental access.
233. One way to access content on the Web is to type a URL (Uniform Resource Locator) into the address line of the browser.
234. A URL is an address that points to some resource located on a Web server that is accessible over the Internet. This may be a Web site, a Web page, an image, a sound or video file, or other resource.
235. A URL can be either a numeric, machine-readable Internet Protocol or “IP” address, or an alphanumeric, human-readable “domain name” address.
236. Every Web server connected to the Internet is assigned an IP address.
237. A typical IP address looks like “13.1.64.14.” Typing the URL “<http://13.1.64.14/>” into a browser will bring the user to the Web server that corresponds to that address.
238. For convenience, most Web servers have human-readable domain name addresses in addition to IP addresses. For example, typing in "<http://www.paed.uscourts.gov>" will bring you to the same Web server as typing in "[http://204.170.64.143.](http://204.170.64.143)"

239. Every time a user attempts to access material located on a Web server by entering a domain name address into a Web browser, a request is made to a Domain Name Server to “resolve,” or translate, the domain name address into an IP address. That IP address is then used to locate the Web server from which content is being requested.
240. A domain name address typically consists of several parts. For example, the alphanumeric URL <http://www.paed.uscourts.gov/documents/opinions> can be broken down into three parts. The first part is the transfer protocol the computer will use in accessing the content (e.g., “http” for Hypertext Transfer Protocol); next is the name of the host server on which the information is stored (e.g., [www.paed.uscourts.gov](http://www.paed.uscourts.gov)); and then the name of the particular file or directory on that server (e.g. [/court/index.html](http://www.paed.uscourts.gov/court/index.html) /[documents/opinions](http://www.paed.uscourts.gov/documents/opinions)).
241. A single Web page may be associated with more than one URL. For example, the URLs <http://www.newyorktimes.com> and <http://www.nytimes.com> will both take the user to the New York Times home page.
242. The topmost directory in a Web site is often referred to as that Web site’s root directory or root URL. For example, in <http://www.paed.uscourts.gov/documents>, the root URL is <http://www.paed.uscourts.gov>.
243. There may be hundreds or thousands of pages under a single root URL; alternatively, there may be one or only a few.
244. There are a number of Web hosting companies that maintain Web sites for other businesses and individuals. Sometimes these companies provide “virtual hosting” services, where Web sites with different domain names are administered on one server. The parties do not stipulate to the number of servers, either absolutely or as a percentage of a total, that administer more than one site.
245. “Virtual hosting” services can be provided through the process of “IP-based hosting,” where each domain name is assigned a unique IP number. For example, [www.baseball.com](http://www.baseball.com) might map to 10.3.5.9 and [www.XXX.com](http://www.XXX.com) might map to 10.0.42.5.
246. “Virtual hosting” services can be provided through the process of “name-based hosting,” where multiple domain name addresses are mapped to a single IP address. If the hosting company were using this method, both [www.baseball.com](http://www.baseball.com) and [www.XXX.com](http://www.XXX.com) could map to a single IP address, e.g., 10.3.5.9.
247. As a result of the “name-based hosting” process, some sites with heterogeneous content can and do share an IP address. The parties do not stipulate to the number of sites, either absolutely or as a percentage of a total, that share an IP address.
248. In addition to accessing a Web page by typing its URL into a browser, users may also find content on the Web using engines that search for requested keywords.

249. In response to a keyword request, a search engine will display a list of Web sites that may contain responsive content and provide links to those sites.
250. Available search engines include Google and Lycos.
251. Users may access a Web page by using a Web directory, which has indexed lists of links to Web sites sorted by topical category. An example of a Web directory is Yahoo!.
252. Specialized directories, which index lists of links only in a particular category, are also available.
253. Because of the vast size and decentralized structure of the Web, no search engine or directory indexes all of the content on the Web that could be indexed, in theory, by search engines. The universe of content that could be indexed, in theory, by standard search engines is known as the "publicly indexable Web."
254. A user may access a Web page by way of a link from another Web page.
255. 75% of all Web access is accounted for by 5% of all Web sites. Popular sites such as Google, Yahoo!, Amazon, Disney, eBay, or Hotmail account for a large proportion of Web traffic.
256. Some sites on the Web serve as a proxy or intermediary between a user and another Web page. When using a proxy server, a user does not access the page from its original URL, but rather from a URL on the proxy server.
257. One type of proxy service is an "anonymizer." Users may access Web sites indirectly via an anonymizer when they do not want the Web site they are visiting to be able to determine the IP address from which they are accessing the site, or to leave cookies on their browser.
258. A "cookie" is a piece of information that a Web site leaves on a user's browser and retrieves when that same user accesses the same Web site on a subsequent visit. By using cookies, a Web site can "remember," for example, a user's credit card number, location, or content preferences. The two most popular commercially available browsers, Netscape Navigator and Internet Explorer, can both be configured to reject cookies. Network firewalls, often used in institutional settings, can be configured both to reject cookies and to mask the IP address from which network users access the Internet.
259. Some proxy servers can be used to translate Web page content from one language to another. Rather than directly accessing the original Web page in its original language, users can instead indirectly access the page via a proxy server offering translation features. The translation services offered by these types of proxy servers are most helpful for extracting factual information presented as text. The parties do not stipulate to the effectiveness of proxy servers that provide anonymizer or translation services or the frequency with which these types of services are used.

260. Perhaps the most widely used method of communication on the Internet is electronic mail, or “e-mail.”
261. Online discussion groups and chat rooms relating to a variety of subjects are available through many Web sites.

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### **LIBRARIES AND THE INTERNET**

262. Reference librarians across America answer more than 7 million questions weekly.
263. According to a recent report by the U.S. National Commission on Libraries and Information Science, approximately 95% of all public libraries provide public access to the Internet. Bertot & McClure, *Public Libraries and the Internet 2000: Summary Findings and Data Tables*, Report to National Commission on Libraries and Information Science, at 3 (September 7, 2000).
264. The Internet is one among many information resources provided by public libraries.
265. At some libraries, patron demand for Internet access may exceed the supply of computer terminals with access to the Internet. These libraries use sign-in and time limit procedures and/or establish rules regarding the allowable uses of the terminals, in an effort to ration their computer resources.
266. The widespread availability of Internet access in public libraries is due, in part, to the availability of public funding, including state and local funding and the federal funding programs regulated by CIPA.
267. Many libraries provide training or guidance to patrons on how to use the Internet.
268. Public libraries often select certain “recommended Web sites” to which they provide links on the library’s website. These Web sites are selected by librarians using criteria similar to those employed in traditional collection development. Unless the library determines otherwise, selection of these specific sites generally does not preclude patrons from attempting to access other Internet Web sites.
269. Approximately 95% of libraries with public Internet access have some form of “acceptable use” policy or “Internet use” policy governing patron use of the Internet. These policies set forth the conditions under which patrons are permitted to access and use the library’s Internet resources.
270. Some acceptable use and Internet use policies contain a disclaimer concerning the accuracy and reliability of content that patrons may encounter on the Internet.
271. According to the June 2000 *Survey of Internet Access Management in Public Libraries*, approximately 7% of libraries with public Internet access had installed software similar to that described in paragraph 275 on all public Internet terminals.

272. Some libraries use a system of providing the optional use of software similar to that described in paragraph 275, in which the patron decides whether to engage the software.
273. Some libraries have never offered public access to the Internet without using software similar to that described in paragraph 275, having used the software from the outset.
274. The parties are not aware of any public library that uses software similar to that described in paragraph 275 which bases the categorization of URLs on a judicial determination that the content is illegal.

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## **TECHNOLOGY PROTECTION MEASURES**

### General

275. Commercially available products that can be configured to block or filter access to certain material on the Internet are among the "technology protection measures" that may be used to comply with CIPA.
276. Of the various commercially available products, network-based products are the ones generally marketed to institutions, such as public libraries, that provide Internet access through multiple terminals. Network-based products are designed for use on a network of computers and funnel requests for Internet content through a centralized network device (such as a "proxy server").
277. Three such commercially available, network-based products – SurfControl's Cyber Patrol, N2H2's Bess/i2100, and Secure Computing's SmartFilter– currently have a significant share of the public library market. References to "products" or "product vendors" in these stipulations refer only to these three products and their vendors.

### Categories and Category Lists

278. Once a product is installed on a network, customers choose which pre-defined categories of Internet content and/or features they wish the product to block. After a customer has "enabled" the chosen categories, the product is designed to prevent access to Web sites or pages classified into those categories.
279. The product vendors offer multiple categories of Internet content and features, for which they have created unique definitions, that a user may choose to enable. SurfControl uses 40 such categories, N2H2 uses 35 categories (and seven "Exception" categories, see infra), and Secure Computing uses 30 categories.
280. SurfControl offers the following categories: Adult/Sexually Explicit; Advertisements; Arts & Entertainment; Chat; Computing & Internet; Criminal Skills; Drugs, Alcohol & Tobacco; Education; Finance & Investment; Food & Drink; Gambling; Games; Glamour & Intimate Apparel; Government & Politics; Hacking; Hate Speech; Health & Medicine; Hobbies & Recreation; Hosting Sites; Job Search & Career Development; Kid's Sites;

Lifestyle & Culture; Motor Vehicles; News; Personals & Dating; Photo Searches; Real Estate; Reference; Religion; Remote Proxies; Sex Education; Search Engines; Shopping; Sports; Streaming Media; Travel; Usenet News; Violence; Weapons; and Web-based Email.

281. N2H2 offers the following categories: Adults Only; Alcohol; Auction; Chat; Drugs; Electronic Commerce; Employment Search; Free Mail; Free Pages; Gambling; Games; Hate/Discrimination; Illegal; Jokes; Lingerie; Message/Bulletin Boards; Murder/Suicide; News; Nudity; Personal Information; Personals; Pornography; Profanity; Recreation/Entertainment; School Cheating Information; Search Engines; Search Terms; Sex; Sports; Stocks; Swimsuits; Tasteless/Gross; Tobacco; Violence; and Weapons. Additionally, N2H2 offers seven "exception categories." These exception categories include Education, Filtered Search Engine, For Kids, History, Medical, Moderated, and Text/Spoken Only. When an exception category is enabled, access to any Web site or page via a URL in the category list that carries both a category tag and an exception category tag, for example, both "Sex" and "Education," will be allowed, even if the customer has enabled the product to otherwise block the category "Sex." As of November 15, 2001, of those Web sites categorized by N2H2 as "Sex," 3.6% were also categorized as "Education," 2.9% as "Medical," and 1.6% as "History."
282. SmartFilter offers the following categories: Anonymizers/Translators; Art & Culture; Chat; Criminal Skills; Cults/Occult; Dating; Drugs; Entertainment; Extreme/Obscene/Violence; Gambling; Games; General News; Hate Speech; Humor; Investing; Job Search; Lifestyle; Mature; MP3 Sites; Nudity; On-line Sales; Personal Pages; Politics, Opinion & Religion; Portal Sites; Self-Help/Health; Sex; Sports; Travel; Usenet News; and Webmail.
283. The list of categories used by each of the product vendors, and the definitions of the types of content and/or features that are classified into those categories, are available to the public at large as well as to the consumers of the products. See, e.g., [http://www.surfcontrol.com/education/products/cyberpatrol\\_web/url\\_category\\_list/](http://www.surfcontrol.com/education/products/cyberpatrol_web/url_category_list/) (SurfControl); [http://www.n2h2.com/solutions/filtering\\_info/filter\\_categories.php](http://www.n2h2.com/solutions/filtering_info/filter_categories.php) (N2H2); <http://www.securecomputing.com/index.cfm?sKey=86> (Secure Computing).
284. Product vendors maintain a database or "category list" of URLs and associate each URL in that list with a "tag" or other identifier that indicates the vendor's evaluation of whether the content or features of the web site or page accessed via that URL meets one or more of its category definitions.
285. The category lists maintained by product vendors can include URLs in either their human-readable domain name address form or their numeric IP address form, or both.
286. Product vendors automatically and frequently provide their customers with electronic updates to the category lists used by their products. Secure Computing updates its list twice a week; N2H2 does so nightly; SurfControl updates its lists every weekday. These updates reflect additions and deletions made to the category lists.

287. Web authors are not individually notified by product vendors when their sites or pages are categorized and the corresponding URLs are placed on a category list.
288. Product vendors provide publicly accessible tools that allow any person with access to the Web, and knowledge of such tools' existence, to check to determine whether a particular Web site or page has been categorized by the product, and, if so, to which category it has been assigned. See [http://www.surfcontrol.com/education/test\\_a\\_site/](http://www.surfcontrol.com/education/test_a_site/) (SurfControl's Test-a-Site feature); <http://database.n2h2.com/cgi-perl/catrpt.pl> (N2H2's URL Checker); [http://www.securecomputing.com/cgi-bin/filter\\_whereV301.cgi](http://www.securecomputing.com/cgi-bin/filter_whereV301.cgi) (Secure Computing's SmartFilterWhere).
289. These publicly available tools also allow any person with access to the Web to use the Web interface or electronic mail to request that a Web page or site be categorized or re-categorized by the vendors.
290. The category lists maintained by the product vendors are considered to be proprietary information, and are unavailable to customers or the general public for review.
291. No category definition used by the product vendors is identical to the legal definitions of obscenity, child pornography, or harmful-to-minors material.
292. There is no judicial involvement in the creation of the category definitions of the product vendors and no judicial determination is made before these vendors categorize a Web page or site and place the corresponding URL(s) on a category list.
293. The number and definition of the categories used by the product vendors are subject to change over time in response to market demand.

#### Installation, Operation, and Customization of Products

294. Customers can choose to enable all, some, or any combination of the categories provided by the product vendors.
295. The products include reporting tools that allow the customer to generate various sets of data relating to the operation of the product. Among other things, for example, a customer can generate a complete list of the URLs of Web sites or pages to which access was not allowed during actual use of the computers on the network as a result of the customer's choice to enable particular categories.
296. SurfControl offers customers the opportunity to purchase an artificial intelligence product as an add-on that will automatically review the logs of sites actually accessed by users of the network on which the product is installed and determine if sites visited but not already categorized by the product vendor should be assigned category tags associated with the product. The customer then decides whether or not to retain the category tag(s) assigned by the artificial intelligence tool.

297. If the customer's configuration of the product results in a block when a user is attempting to access a Web site or page using a particular URL, the user is immediately presented with a screen that indicates that a block has occurred as a result of the operation of the product. These "denial screens" appear only at the point that a user attempts to access a site or page in an enabled category.
298. Denial screens are customizable by the customer and can be tailored to display, for example,
- the enabled category that resulted in the block,
  - instructions explaining how the user can request that the vendor reconsider its categorization of the blocked Web page or site, or
  - instructions advising the user of the customer's Internet policy and explaining how the user can request that the customer allow access to the page or site.
299. The products typically will have no effect on the operation of search engines, and the list of results returned by a search engine will not be restricted; rather, the denial screen will appear only if a user attempts to click through to a Web page or site on that results list that is in an enabled category. However, N2H2 does have a "search terms" category which, when enabled, will prevent users from using certain key words in their searches.
300. The product vendors offer customer support, including technical assistance related to installation, operation, administration, and customization of their products. The parties do not stipulate to either the frequency or efficacy of such customer support.
301. The product vendors provide a demonstration version of their product free of charge so that potential customers can evaluate the product before purchasing it.
302. The product vendors sell their products on a subscription basis. Secure Computing's product, for example, is sold on either a one-year, two-year or three-year subscription basis.

#### Collecting URLs for Review

303. REDACTED.
304. No currently available method or combination of methods for collecting URLs can collect the addresses of all URLs on the Web.
305. It is unknown what portion of the publicly indexable Web has been reviewed and/or categorized by the product vendors.



### Review and Categorization of Internet Content and Features

- 306. REDACTED.
- 307. REDACTED.
- 308. REDACTED.
- 309. A Web site or page that is automatically evaluated and categorized by key word analysis tools is necessarily categorized without reference to the visual content of the site or page.
- 310. REDACTED.
- 311. REDACTED.
- 312. REDACTED.
- 313. REDACTED.
- 314. REDACTED.
- 315. REDACTED.
- 316. REDACTED.

### Re-Review of Internet Content and Features After Categorization

- 317. Web sites or pages can change content without changing their domain name addresses or IP addresses. Changes in content may or may not have any effect on the nature of the content available on the page or the site.
- 318. Web sites can add or delete Web pages.
- 319. REDACTED.
- 320. REDACTED.
- 321. REDACTED.
- 322. REDACTED.
- 323. REDACTED.

324. REDACTED.

Respectfully submitted,

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