PLAINTIFFS' JOINT PROPOSED FINDINGS OF FACT

SUMMARY OF KEY FACTS

1. 95% of public libraries in the United States provide their library patrons with access to the Internet, as of 2000. (Stip. 263)

2. 93% of public libraries in the United States did not require adults to use blocking programs when accessing the Internet at the public library, as of June 2000. (Stip. 271)

3. No category definition used by the blocking programs is identical to the legal definitions of obscenity, child pornography, or harmful-to-minors material. (Stips. 274, 291)

4. There is no judicial involvement in the creation of the category definitions of the blocking programs and no judicial determination is made before these programs categorize a Web page or site and place the corresponding URL(s) on a category list. (Stip. 292)

5. There is no judicial involvement in the decision by any library to block a Web page and no library obtains a judicial determination in order to unblock a Web page. (Stip. 274; Biek 3/28/02 at 112)

6. The category lists maintained by the blocking programs are considered to be proprietary information, and are unavailable to customers or the general public for review. (Stip. 290)

7. Blocking programs are fundamentally unable to block only illegal Internet content while simultaneously allowing access to all protected speech. (Nunberg 3/25/02 at 256-69, 3/26/02 at 14-15, 43; Barlow 4/1/02 at 50; Pls. Ex. 121 at 36-37)

8. Blocking programs block access to a substantial amount of speech on the Internet that is clearly constitutionally protected for adults and minors. (See Findings 155-263 *infra*)

9. The record contains evidence that at least 4,300 - 6,300 Web pages containing protected speech are wrongly blocked by four leading blocking programs. It is undisputed that these pages represent only a small fraction of Web pages wrongly blocked by the programs. (See Findings 158, 200-219 *infra*)

10. Defendant's expert Cory Finnell found that 7-15% of the blocked Web sites in public libraries that he analyzed do not contain content that meets even the blocking products' own category definitions, let alone the CIPA definitions of obscenity, child pornography, or harmful to minors. (Finnell 4/01/02 at 148; Def. Ex. 179 at 6-8)

11. Based on his own estimates of overblocking, Mr. Finnell conceded that millions of attempts made by library patrons to get information from the Internet would be wrongly

blocked every year if every library in the country installed mandatory blocking programs as required by CIPA. (Finnell 4/1/02 at 175-79)

12. Blocking programs fail to block access to a substantial amount of content on the Internet that CIPA defines as obscenity, child pornography, or harmful to minors. (See Findings 264-276 *infra*)

13. Blocking programs do not provide the means to unblock a Web page only for a specific user for a specific period of time. (See Findings 299-300 *infra*)

14. The mission of public libraries is to provide patrons with the widest possible range of information and ideas. (Morgan 3/25/02 at 10; Hamon 3/25/02 at 204-05; Biek 3/28/02 at 118; Davis 4/1/02 at 102-03; Pls. Exs. 61, 64)

15. It would be inconsistent with the mission of public libraries to deny patrons access to material because of disapproval of its content. (Morgan 3/25/02 at 10-13; Reed 3/25/02 at 172-173; Hamon 3/25/02 at 205; Davis 4/1/02 at 106; Lipow 4/2/02 at 159; Chelton 4/2/02 at 192; Pls. Exs. 61, 107)

16. Public libraries will assist patrons in obtaining access to all materials except those that are clearly illegal, even if they do not collect those materials in their physical collection. (Cooper 3/25/02 at 94; Cronin 3/29/02 at 96-97; Davis 4/1/02 at 103-04; Lipow 4/1/02 at 160-61)

17. Requiring library patrons to ask for a Web site to be unblocked will deter many patrons because they are embarrassed, or want to protect their privacy or remain anonymous. (Morgan 3/25/02 at 49-50; Cooper 3/25/02 at 137; Reed 3/24/02 at 181; Rood 3/26/02 at 147-48; Brown 3/26/02 at 156; Bertman 3/26/02 at 322-23; Lipow 4/2/02 at 147-48)

18. Public libraries use a variety of effective means to help patrons find content they want and avoid unwanted and illegal content. (See findings 303-317 *infra*)

THE NATURE OF THE INTERNET

19. The Internet is a vast, interactive medium based on a decentralized network of computers around the world. (Stip. 219).

20. 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. (Stip. 221)

21. 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). (Stip. 222)

22. 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. (Stip. 223)

23. 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. (Stip. 225)

24. 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. (Stip. 226)

25. 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. (Stip. 227)

26. 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. (Stip. 228)

27. Online discussion groups and chat rooms relating to a variety of subjects are available through many Web sites. (Stip. 261)

28. Generally, users must take affirmative steps to access content on the Web. (Stip. 229)

29. A user may access a Web page by way of a link from another Web page. (Stip. 225, 254)

30. Another way to access content on the Web is to type a URL (Uniform Resource Locator) into the address line of the browser. (Stip. 233)

31. 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. (Stip. 234)

32. A URL can be either a numeric, machine-readable Internet Protocol or "IP" address, or an alphanumeric, human-readable "domain name" address. (Stip. 235)

33. Every Web server connected to the Internet is assigned an IP address. (Stip. 236)

34. 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. (Stip. 237)

35. 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." (Stip. 238)

36. 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. (Stip. 239)

37. A Web site may be accessed by using either its domain name address or its IP address. (Nunberg 3/26/02 at 28)

38. 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); and then the name of the particular file or directory on that server (e.g. /court/index.html /documents/opinions). (Stip. 240)

39. 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. (Stip. 241)

40. 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. (Stip. 242)

41. There may be hundreds or thousands of pages under a single root URL; alternatively, there may be one or only a few. (Stip. 243)

42. 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. (Stip. 244)

43. "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 might map to 10.3.5.9 and www.XXX.com might map to 10.0.42.5. (Stip. 245)

44. "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 and www.XXX.com could map to a single IP address, e.g., 10.3.5.9. (Stip. 246)

45. As a result of the "name-based hosting" process, up to millions of pages with heterogeneous content may share an IP address. (Stip. 247; Nunberg 3/26/02 at 28-29; Edelman 4/2/02 at 42-43; Pls. Ex. 121 at 25; Pls. Ex. 170 at 46-48)

46. Users may find content on the Web using engines that search for requested keywords. (Stip. 248)

47. 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. (Stip. 249)

48. Available search engines include Google and Lycos. (Stip. 250)

49. Search results often converge rather than diverging, i.e., doubling the number of search results followed will not double the number of sites retrieved, because many of those sites will link to each other rather than to new sites. (Nunberg 3/25/02 at 312-13 3/26/02 at 62)

50. 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!. (Stip. 251)

51. Specialized directories, which index lists of links only in a particular category, are also available. (Stip. 252)

52. Search engines and directories often return a limited number of sites in their search results (e.g., Google will only return 2,000 sites in response to a search, even if it has 530,000 sites meeting the search criteria in its index). (Nunberg 3/25/02 at 291)

53. 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. (Stip. 224; Nunberg 3/25/02 at 260)

54. The universe of content on the Web that could be indexed, in theory, by standard search engines is known as the "publicly indexable Web." (Stip. 253)

55. The publicly indexable Web is growing at a rate of 1.5 million pages per day. (Nunberg 3/245/02 at 259; Pls. Ex. 170 at 8)

56. The content of the Web is constantly changing at an extraordinary rate. (Nunberg 3/25/02 at 259, 272)

57. Web sites or pages can change content without changing their domain name addresses or IP addresses. (Stip. 317)

58. Web sites often add or delete Web pages. (Stip. 318; Nunberg 3/25/02 at 272)

59. Individual Web pages have an average life span of approximately 90 days. (Nunberg 3/25/02 at 272)

60. The publicly indexable Web is limited to those pages to which other Web pages are linked. This is because online indexing techniques, used by popular search engines and directories such as Yahoo!, Lycos and Alta Vista, are based on "spidering" technology which finds sites to index by following links from site to site in a continuous search for new content. If a Web page or site is not linked to others, then spidering will not discover, and no one can index, that page or site. Furthermore, many larger Web sites contain instructions in their software code which will prevent a spider from investigating that site, and therefore the contents of such sites also cannot be indexed. (Nunberg 3/25/02 at 262-65)

61. Sites or pages lacking links can still be made publicly accessible without being made publicly indexable, by, e.g., using individual or mass e-mailings ("spam") to distribute the URL to potential readers or customers, or by using types of Web links that cannot be found by spiders but can be seen and used by readers. (Nunberg 3/25/02 at 265)

62. "Spamming" is a common method of distributing to potential customers links to pornographic content that is not indexable. (Nunberg 3/25/02 at 267-68, 313-14)

63. The size of the un-indexable Web, or the "Deep Web", is two to ten times that of the publicly indexable Web. (Nunberg 3/25/02 at 266-67)

64. Because of the vast size and decentralized structure of the Web, no search engine or directory indexes all of the content on the publicly indexable Web. (Stip. 253)

65. No more than 16% of the content currently on the publicly indexable Web has been indexed by any one search engine or directory, and all search engines and directories combined have indexed no more than 50%. (Nunberg 3/26/02 at 5; Pls. Ex. 170 at 8)

66. No currently available method or combination of methods for collecting URLs can collect the addresses of all URLs on the Web. (Stip. 304)

67. Recent estimates indicate that no more than 1-2% of the content on the Web is pornographic or sexually explicit. (Nunberg 3/25/02 at 270-71; Pls. Ex. 170 at 9)

68. Some search engines, such as Google, keep archived copies of the Web pages they index. The "cached" copy stored by Google will have a URL that is different than the original URL. (Nunberg 3/26/02 at 32-33; Pls. Ex. 170 at 55-56)

69. Because Web sites often change rapidly, caches are the only way to access pages that have been taken down, revised, or changed their URLs for some reason. For example, a magazine might place its current stories under a given URL, and replace them monthly with new stories. If a user wanted to find an article published six months ago, he or she would be unable to access it if not for Google's cached version. (Nunberg 3/26/02 at 32-33; Pls. Ex. 170 at 55-56)

70. 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. (Stip. 256)

71. 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. (Stip. 257)

72. 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. (Stip. 259)

73. Approximately 30% of Web content is in non-English languages, and the amount of non-English content is growing faster than the amount of English content. (Nunberg 3/26/02 at 360; Pls. Ex. 170 at 54-55)

LIBRARIES AND INTERNET ACCESS

74. 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). (Stip. 263)

75. The Internet vastly expands the amount of information available to patrons of public libraries. (Morgan 3/25/02 at 20-21; Cooper 3/25/02 at 96; Chelton 4/2/02 at 187)

76. The Internet has broken down distinctions between public, academic and other libraries by providing patrons with easy access to information from all types of libraries.

(Hamon 3/25/02 at 206; Lipow 4/2/02 at 139-40)

77. According to the June 2000 *Survey of Internet Access Management in Public Libraries*, approximately 7% of libraries with public Internet access had mandated the use of blocking programs by adult patrons. (Stip. 271)

78. The American Library Association first passed a formal resolution in 1997 opposing the mandatory use of blocking programs in public libraries. (Pls. Exs. 3-6)

79. 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. (Stip. 265)

80. Some libraries have joined consortia, such as the South Central Library System in Wisconsin, in order to centralize the provision of Internet access and other services to independently governed member libraries. (Stip. 131; Hamon 3/25/02 at 197-99, 206-09, 213)

81. 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. (Stip. 266)

82. Some libraries that pay for some Internet access terminals through the e-rate and/or LSTA programs also have Internet access terminals that are not funded by those programs. (Hamon 3/25/02 at 213)

83. Public libraries play a critical role in affording access to the economic and social benefits of the Internet to those who do not have computers at home, assuring that advanced information services are universally available to all segments of the American population on an equitable basis. Approximately 50.5% of U.S. households had Internet connections as of September 2001. (Pls. Exs. 37, 40, 56 at 3, 57, 59-60; Reed 3/25/02 at 162, 164-65; Biek 3/28/02 at 116)

84. Of the 143 million Americans using the Internet, approximately 10%, or 14.3 million people, access the Internet at a public library. (Pls. Ex. 56 at 3, 40)

85. Internet use at public libraries varies by race and ethnicity. As of September 2001, 18.7% of Blacks using the Internet used the public library as an access point. The comparable figures for Hispanics, Asian Americans, and Whites, are 13.8%, 11.6%, and 8.6%, respectively. (Pls. Ex. 56 at 40)

86. Internet access at public libraries is more often used by those with lower incomes than those with higher incomes. About 20.3% of Internet users with household family income of less than $15,000 per year use public libraries for Internet access. (Pls. Ex. 56 at 41)

87. Some of the people who access the Internet at public libraries do not have Internet access from other locations. Among racial and ethnic groups, 19.4% of Blacks, 16% of Hispanics, 12.7% of Whites, and 6.6% of Asian American and Pacific Islanders using the Internet at libraries do not also access the Internet from home, work, or school. (Pls. Ex. 56 at 40-41)

88. According to data reported by the U.S. Census Bureau, the inequality of Internet access among various groups is increasing. (Pls. Ex. 56 at 26)

89. According to data reported by the U.S. Census Bureau, Internet use by Whites in October 1997 exceeded Internet use by Hispanics by 14.3%. The disparity in Internet use between these groups was 21% in December 1998, 26.6% in August 2000, and 28.3% in September 2001. (Pls. Ex. 56 at 26)

90. According to data reported by the U.S. Census Bureau, Internet use by Whites in October 1997 exceeded Internet use by Blacks by 12.1%. The disparity in Internet use between these groups was 18.6% in December 1998, 21% in August 2000, and 20.1% in September 2001. (Pls. Ex. 56 at 26)

91. Approximately 70% of libraries serving communities with poverty levels in excess of 40% receive e-rate discounts. (Pls. Ex. 37 at 4)

CIPA IS INCONSISTENT WITH THE USUAL FUNCTIONS OF PUBLIC LIBRARIES

92. The mission of public libraries is to provide patrons with the widest possible range of information and ideas. (Morgan 3/25/02 at 10; Hamon 3/25/02 at 204-05; Biek 3/28/02 at 118; Davis 4/1/02 at 102-03; Pls. Exs. 1-2, 12, 28, 61, 64, 107; Joint Ex. 3 at 74)

93. The vast majority of public libraries across the country have adopted the ALA Library Bill of Rights and/or Freedom to Read Statement, including every library testifying on behalf of defendants in this case. (Biek 3/28/02 at 118; Sudduth 3/28/02 at 255-56; Pls. Exs. 1, 9; Pls. Ex. 55D, §311; Defs. Ex. 81 at 6; Defs. Ex. 82 at App. A; Joint Ex. 4 at 32-33)

94. It would be inconsistent with the mission of the public library to deny patrons access to material because of disapproval of its content. (Morgan 3/25/02 at 10-13; Reed 3/25/02 at 172-73; Hamon 3/25/02 at 205; Davis 4/1/02 at 106; Lipow 4/2/02 at 159; Chelton 4/2/02 at 192; Pls. Exs. 1, 3-6, 9, 11, 12-14, 17, 19, 28, 61, 107)

95. Public libraries provide information not only for educational purposes, but also for recreational, professional, and other purposes. (Cooper 3/25/02 at 89-90; Reed 3/25/02 at 173; Hamon 3/25/02 at 205; Davis 4/1/02 at 102; Joint Ex. 3 at 86; Joint Ex. 4 at 32)

96. Public libraries routinely provide access to some materials in their collections,

including books, magazines, and videos, that feature nudity or are otherwise sexually explicit. (Morgan 3/25/02 at 12-13, 16; Cooper 3/25/02 at 94-95; Reed 3/25/02 at 175; Hamon 3/25/02 at 210; Biek 3/28/02 at 129-31, 134; James 3/29/02 at 21-22; Barlow 4/1/02 at 55-57; Chelton 4/2/02 at 189, 199-200; Joint Ex. 2 at 19-20; Joint Ex. 4 at 61-64; Joint Ex. 5 at 49-50)

97. Public libraries generally do not prohibit minors from viewing or checking out materials available in the libraries' physical collection. (Biek 3/28/02 at 112, 122, 134; James 3/29/02 at 21; Barlow 4/1/02 at 48, 57; Pls. Exs. 10, 21)

98. Public libraries routinely provide patrons with access to materials not in their collections through the use of bibliographic access tools and interlibrary loan programs. (Morgan 3/25/02 at 17-19; Cooper 3/25/02 at 93-94; Hamon 3/25/02 at 208; James 3/29/02 at 24; Barlow 4/1/02 at 58-59; Davis 4/1/02 at 103-04; Lipow 4/2/02 at 138-39, 163)

99. Public libraries will assist patrons in obtaining access to all materials except those that are clearly illegal, even if they do not collect those materials in their physical collection. (Cooper 3/25/02 at 94; James 3/29/02 at 24; Cronin 3/29/02 at 96-97; Davis 4/1/02 at 103-04; Lipow 4/1/02 at 160-61)

100. Traditionally, when public libraries index, classify, and catalog materials, they do so with the purpose of assisting patrons in gaining access to those materials. (Davis 4/1/02 at 104; Chelton 4/2/02 at 182-86; Joint Ex. 7 at 13-14)

101. Defendants' librarian experts agreed that libraries should not limit Internet access in public libraries to only those Web sites reviewed and preselected by librarians. (Davis 3/28/02 at 105; Cronin 3/29/02 at 99)

102. Public libraries make selection and policy decisions at the local level. (Reed 3/25/02 at 172, 176; Chelton 4/2/02 at 184-84; 210)

103. Public libraries ordinarily do not delegate decisions on the public provision of information to third-parties lacking library experience and familiarity with the local communities the libraries serve. (Chelton 4/2/02 at 196-97)

104. Unlike print collections, the cost of providing Internet access at public libraries does not vary based on the amount of content provided or available shelf space. It costs more to provide filtered Internet access than to provide unfiltered access. (Cronin 3/29/02 at 99-100; Chelton 4/2/02 at 187)

105. Public libraries have policies that protect the privacy and confidentiality of patron records. (Morgan 3/25/02 at 19-20, 33-34; Cooper 3/25/02 at 114-18; Reed 3/25/02 at 175; Pls. Exs. 14, 23, 26, 61)

106. By mandating the use of blocking programs in all public libraries who participate

in the e-rate and LSTA programs, CIPA supercedes local decision-making. (Morgan 3/25/02 at 45-46; Reed 3/25/02 at 176-77; Chelton 4/2/02 at 191-93)

107. By mandating the use of blocking programs even on staff computers, CIPA will prevent librarians from evaluating Web sites for inclusion on their selected sites lists. (Reed 3/25/02 at 177, 179-81)

THE OPERATION OF TECHNOLOGY PROTECTION MEASURES

108. Commercially available products that can be configured to block or filter access to certain material on the Internet are the only currently available "technology protection measures" that may be used to comply with CIPA. (Stip. 275)

109. Of the various commercially available blocking products, network-based products are the ones generally marketed to institutions, such as public libraries, that provide Internet access through multiple terminals. Network-based blocking 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"). (Stip. 276)

110. Three such commercially available, network-based blocking products – SurfControl's Cyber Patrol, N2H2's Bess/i2100, and Secure Computing's SmartFilter – currently have a significant share of the public library market. (Stip. 277)

111. Websense, another commercially available, network-based blocking product, is also currently used in the public library market. (Barlow 4/1/02 at 21; Def. Ex. 179 at 4)

112. Once a blocking 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. (Stip. 278)

113. The blocking 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. (Stip. 279) Websense uses 30 categories. (Def. Ex. 300)

114. No category definition used by the blocking product vendors is identical to the legal definitions of obscenity, child pornography, or harmful-to-minors material. (Stip. 291)

115. There is no judicial involvement in the creation of the category definitions of the blocking 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. (Stip. 292)

116. Category definitions and categorization decisions are made without reference to local community standards. (Joint Ex. 8 at 149; Joint Ex. 9 at 116-7; Joint Ex. 10 at 10-11)

117. Web authors are not individually notified by blocking product vendors when their sites or pages are categorized and the corresponding URLs are placed on a category list. (Stip. 287; Bertman 3/26/02 at 321)

118. SurfControl's Cyber Patrol 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. (Stip. 280)

119. 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," only 3.6% were also categorized as "Education," 2.9% as "Medical," and 1.6% as "History." (Stip. 281)

120. Websense offers the following categories: Abortion Advocacy; Advocacy Groups; Adult Material; Business & Economy; Drugs; Education; Entertainment; Gambling; Games; Government; Health; Illegal/Questionable; Information Technology; Internet Communication; Job Search; Militancy/Extremist; News & Media; Productivity Managment; Bandwidth Management; Racism/Hate; Religion; Shopping; Society and Lifestyle; Special Events; Sports; Tasteless; Travel; Vehicles; Violence; and Weapons. (Def. Ex. 300)

121. 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; Lifetstyle; Mature; MP3 Sites; Nudity; On-line Sales; Personal Pages; Politics, Opinion & Religion; Portal Sites; Self-Help/Health; Sex; Sports; Travel; Usenet News; and Webmail. (Stip. 282)

122. The list of the types of categories used by each of the blocking 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/ (SurfControl); http://www.n2h2.com/solutions/filtering_info/filter_categories.php (N2H2); http://www.securecomputing.com/index.cfm?sKey=86 (Secure Computing). (Stip. 283)

123. Each blocking product vendor maintains a database or "category list" of URLs and associates 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. (Stip. 284)

124. The category lists maintained by blocking product vendors can include URLs in either their human-readable domain name address form or their numeric IP address form, or both. (Stip. 285)

125. The actual URLs or IP addresses of the Web sites or pages contained in blocking product vendors' category lists are considered to be proprietary information, and are unavailable to customers or the general public for review. (Stip. 290)

126. Customers can choose to enable all, some, or any combination of the categories provided by the blocking product vendors. (Stip. 249)

127. If the customer's configuration of the blocking 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 blocking product. These "denial screens" appear only at the point that a user attempts to access a site or page in an enabled category. (Stip. 297)

128. Denial screens are customizable by the customer. (Stip. 298)

129. Blocking product vendors use a variety of automated and manual methods to identify, or "harvest," Web sites or pages (listed by URL, IP addresses, or both), for possible categorization. These include but are not limited to: requesting pages related to certain keywords from search engines, following links from a variety of online directories (e.g., generalized directories like Yahoo! or the various specialized directories, for example, those Web sites that provide links to sexually explicit content), reviewing lists of newly-registered domain names, buying or licensing lists of URLs from third parties, "mining" the access logs maintained by the servers they supply or license to their customers, and reviewing log files and other submissions from customers and the public. (Stip. 303)

130. After URLs have been "harvested," the blocking product vendors will use automated review, human review, or a combination of the two, in order to determine whether the content or features of the Web page or site accessed via each URL meets a category definition.

(Stip. 306; Nunberg 3/25/02 at 289)

131. Once the URLs have been harvested, some of the blocking product vendors use automated key word analysis tools to evaluate the content and/or features of Web sites or pages accessed via a particular URL. These tools either (1) indicate that the sites or pages do not contain the key word or combination of key words that would indicate that their content meets a category definition, and/or (2) tentatively prioritize or categorize those sites or pages containing the key words or combination of key words searched. This process may be characterized as "winnowing" the harvested URLs. (Stip. 307; Nunberg 3/25/02 at 293-97)

132. The winnowing process is necessary to reduce the number of URLs for review, because it would be impossible for a vendor's staff to review every URL harvested. (Pls. Ex. 121 at 17)

133. Automated systems currently used by the blocking product vendors to prioritize, categorize or tentatively categorize the content and/or features of a Web site or page accessed via a particular URL do not include image recognition technology. (Stip. 308; Nunberg 3/25/02 at 309-11)

134. Image recognition technology is immature, ineffective, and unlikely to improve substantially in the near future. (Nunberg 3/25/02 at 309-11; Pls. Ex. 121 at 18; Joint Ex. 9 at 105-6; Joint Ex. 10 at 149)

135. Due to the reliance on automated text analysis and the absence of image recognition technology in the winnowing and review process, a Web page with sexually explicit images and no text cannot be evaluated. (Nunberg 3/26/02 at 12-13)

136. Web site publishers may use image files rather than text to represent words, i.e., they may use a picture of words rather than plain text, making automated review of their textual contents impossible. For example, if the Playboy Web site displays its name using a logo rather than plain text, the automated text analysis tools will not see or recognize the Playboy name in that logo. (Nunberg 3/26/02 at 13-14)

137. Although sometimes referred to as "artificial intelligence" systems, automated text classification systems are unable to grasp subtle distinctions between types of content which would be obvious to a human. (Nunberg 3/25/02 at 297)

138. No conceivable technology can make the judgments necessary to determine whether a visual depiction fit the legal definitions obscenity, child pornography, or harmful to minors material. (Nunberg 3/26/02 at 14-15)

139. Some blocking product vendors use or have used automated key word analysis tools to evaluate and categorize the content of Web sites or pages, and have added those sites or pages directly to their category lists without any human review of those automated

categorization decisions. (Stips. 306, 310; Pls. Ex. 149)

140. A Web site or page that is automatically evaluated and categorized by automated key word analysis tools is necessarily categorized without reference to the visual content of the site or page. (Stip. 309)

141. Blocking product vendors testified that, in most cases, harvested Web sites or pages are reviewed by employees to determine whether and how those sites or pages should be categorized by the respective blocking products. (Stip. 311)

142. The blocking products all block many thousands of pages that no human being could conceivably find to meet the category definitions into which they were classified, e.g., the parodic site "Kitty Porn," which displays photos of "nude" cats, or an educational Web page entitled "Learn to Play Piano and Write Songs in Three Lessons." (Nunberg 3/25/02 at 302, 3/26/02 at 16-21; Edelman 4/2/02 at 39-41; Pls. Exs. 73-75; Pls. Ex. 80; Pls. Ex. 121 at 23-24; Pls. Exs. 122-24; Pls. Ex. 165)

143. Blocking product vendors have limited staff, of between four and a few dozen people, available to review Web sites or pages. (Pls. Ex. 121 at 18; Joint Ex. 8 at 68-69; Joint Ex. 9 at 45; Joint Ex. 10 at 56)

144. Human reviewers generally focus on English language Web sites, and are generally not required to be multi-lingual. (Pls. Ex. 121 at 27-28; Joint Ex. 8 at 66-69, 106-07; Joint Ex. 9 at 115-16; Joint Ex. 10 at 66)

145. The human reviewers that are employed by these blocking product vendors base their categorization decisions on both the text and the visual depictions that appear on the sites or pages they are assigned to review. (Stip. 312)

146. The blocking product vendors primarily categorize Web sites by tagging those sites at their "root" or "top-level" URL. (Stip. 315)

147. If the "root" or "top-level" URL of a Web site is given a category tag, then access to all content on that Web site will be blocked if the assigned category is enabled by a customer. (Nunberg 3/25/02 at 274-75, 305-09, 3/26/02 at 25-26; Pls. Ex. 70 at 41-45, 69-70; Pls. Ex. 121 at 24)

148. Entire Web sites containing multiple Web pages are commonly categorized without human review of each individual page on that site. (Pls. Ex. 121 at 19-20; Joint Ex. 8 at 61-64; Joint Ex. 9 at 49-50; Joint Ex. 10 at 61-63)

149. Web sites which may contain multiple Web pages and which require authentication or payment for access are commonly categorized based solely on a human reviewer's evaluation of the pages that may be viewed prior to reaching the authentication or

payment page. (Stip. 316)

150. Most blocking product vendors do not re-review categorized sites or pages on a scheduled basis. Priority is placed on reviewing and categorizing new sites and pages, rather than on re-reviewing already categorized sites and pages. (Stips. 321-22)

151. Typically, the blocking product vendor's previous categorization of a Web site is not re-reviewed for accuracy when new pages are added to the Web site. To the extent the Web site was previously categorized as a whole, the new pages added to the site usually share the categorization assigned by the blocking product vendor. (Stip. 323)

152. It is generally the case that URLs newly collected in the harvesting process are compared to URLs already on the blocking product vendor's category lists. Newly collected URLs that are identical to URLs that are already on the category lists are generally not reviewed again by the blocking product vendor. (Stip. 324)

153. With regard to certain types of Internet media, blocking products are unable to block some of that content while allowing other content to be accessed. Blocking products are generally unable to prevent access to specific content delivered via Web-based email and chat platforms. They are also unable to prevent access to specific content delivered via non-Web Internet protocols, such as: SMTP, POP3 or similar full-featured email programs locally installed on an end user's computer, files retrieved via a File Transfer Protocol or "FTP" client, communications via chat and instant messaging services (e.g. Internet Relay Chat or "IRC", AOL Instant Messenger or "AIM", Microsoft Network or "MSN" Messenger), content retrieved from a server using a Telnet client, Messages posted to "newsgroup" discussion groups on Usenet, files distributed via peer-to-peer file sharing applications, and streaming video content. (Edelman 4/2/02 at 58-59; Pls. Ex. 121 at 30-32; Pls. Ex. 125 at 1-6)

154. Some blocking products allow customers to block access to all content delivered via Web-based email and chat platforms or via non-Web Internet protocols regardless of whether that content meets a content category definition. (Edelman 4/2/02 at 58; Pls. Ex. 121 at 31; Pls. Ex. 125 at 1-6)

TECHNOLOGY PROTECTION MEASURES INEVITABLY BLOCK ACCESS TO CONSTITUTIONALLY PROTECTED SPEECH

155. Blocking products prevent access to a substantial amount of speech on the Internet that is appropriate for adults and minors. (Edelman 4/2/02 at 53-54; Nunberg 3/25/02 at 256; Finnell 4/01/02 at 148; Pls. Exs. 82, 122-24; Def. Ex. 179 at 6-8)

156. Blocking products are fundamentally unable to block only illegal Internet content (or, only content matching a blocking products' category definitions) while simultaneously allowing access to all protected speech (or, all content not matching the blocking products' category definitions). These problems are intrinsic to the task of categorizing content on the

Internet and are not likely to be solved by advances in the state of the art. (Nunberg 3/25/02 at 256-69, 3/26/02 at 14-15, 43; Barlow 4/1/02 at 50; Pls. Ex. 121 at 36-37)

157. Every currently available blocking product blocks many thousands, and potentially millions, of Web pages the content of which does not match that vendor's content category definitions, much less the definitions of obscenity, child pornography or harmful to minors material. (Edelman 4/2/02 at 53-54; Finnell 4/1/02 at 175-79; Pls. Ex. 122-24)

158. The record contains evidence that at least 4,300 - 6,300 Web pages containing protected speech are wrongly blocked by four leading blocking products, as they contain content matching neither the blocking products' own category definitions, nor the legal definitions of obscenity, child pornography, and harmful to minors material It is undisputed that these pages represent only a small fraction of Web pages wrongly blocked by the products. (Edelman 4/2/02 at 49-54; Finnell 4/1/02 at 175-79; Pls. Exs. 122-24, 126 at 1-2)

159. Defendant's expert Cory Finnell found that 7-15% of the blocked Web sites in public libraries that he analyzed do not contain content that meets even the blocking products' own definitions of sexually explicit content, let alone the CIPA definitions of obscenity, child pornography, or harmful to minors. (Finnell 4/1/02 at 148; Def. Ex. 179 at 6-8)

160. Analyzing Internet logs from the Tacoma Public Library in Washington, which uses the blocking product Cyber Patrol, Mr. Finnell found that 53 unique host Web servers had been wrongly blocked over the month of August 2001. (Finnell 4/1/02 at 134-36, Def. Ex. 179 at 3-8)

161. Analyzing Internet logs from the Westerville Public Library in Ohio, which uses the blocking product Websense, Mr. Finnell found that 28 unique host Web servers had been wrongly blocked over a period of 3 days. (Finnell 4/1/02 at 136-39, Def. Ex. 179 at 3-8)

162. Analyzing Internet logs from the Greenville Public Library in South Carolina, which uses the N2H2 blocking product, Mr. Finnell found that 157 unique host Web servers been wrongly blocked over a period of 3 days. (Finnell 4/1/02 at 139, Def. Ex. 179 at 3-8)

163. Each individual host server identified by Mr. Finnell as wrongly blocked potentially contains thousands, hundreds of thousands, or even millions of different Web pages across many different Web sites. (See Findings 41-45 *supra*)

164. Mr. Finnell's results underestimate the rate of overblocking, as demonstrated by several examples of overblocking which he found to be correctly blocked. (Finnell 4/1/02 at 156-70, Pls. Exs. 162A-K)

165. Mr. Finnell's results underestimate the rate of overblocking because the overblocking of, e.g., the Web site www.newyorktimes.com, is counted in his results as only one

instance of overblocking–even if multiple patrons were prevented from accessing that Web site. (Finnell 4/1/02 at 153)

166. Based on his own estimates of overblocking, Mr. Finnell conceded that millions of attempts made by library patrons to get information from the Internet would be wrongly blocked every year if every library in the country installed mandatory blocking software as required by CIPA. (Finnell 4/1/02 at 175-79)

167. The overblocking rate at Tacoma Public Library as identified by Mr. Finnell is over 3 times greater than the overblocking rate found by Tacoma librarian David Biek in his own informal and self-serving analysis. (Biek 3/28/02 at 79-80)

168. Defendant's expert Christopher Lemmons, based on his extremely limited analysis of only 99 Web sites, nevertheless found that the blocking products wrongly blocked up to 7% of those sites. (Lemmons 3/28/02 at 197; Def. Ex. 184 at 3-4)

169. Mr. Lemmons conceded that of the 99 sites he tested for overblocking, ten of them were blocked by at least one of the four products tested. (Lemmons 3/28/02 at 211)

170. All of the libraries proffered by defendants that use blocking products testified that there are instances of overblocking in those libraries, i.e., blocking of sites that do not meet the criteria of the blocking product or the definitions of CIPA. (Biek 3/28/02 at 115, 117, 135-35; Belk 3/29/02 at 63, 73; Barlow 4/1/02 at 42-44, 49-52; Ewick 4/3/02 at 45; Joint Ex. 1 at 18-21, 41-42, 45; Joint Ex. 3 at 94; Joint Ex. 4 at 45-46, 49-50; Joint Ex. 5 at 40-41, 59-60; Joint Ex. 6 at 59; Joint Ex. 7 at 45, 52, 59-60, 78, 92)

171. Several of the libraries proffered by defendants that use blocking products testified that they block the same material for adults and children, thereby choosing to block material appropriate for use by adults. (Biek 3/28/02 at 134-35; Barlow 4/1/02 at 42-44; Joint Ex. 4 at 45-46; Joint Ex. 7 at 59-60)

172. The Greenville Public Library, which uses N2H2, blocks categories of content which almost certainly do not meet the definitions of CIPA: Nudity, which blocks only "non-pornographic" images; Sex, which blocks only those depictions of sexual activity that are not intended to arouse; and Tasteless/Gross, which includes contents such as "tasteless humor" and "graphic medical or accident scene photos." (Sudduth 3/28/02 at 243-46; Def. Ex. 274)

173. The Westerville Public Library, which uses Websense, blocks categories of content which almost certainly do not meet the definitions of CIPA: Adult, which includes "full or partial nudity of individuals," as well as sites offering "light adult humor and literature" and "sexually explicit language;" Sexuality/Pornography, which includes "hard-core adult humor and literature" and "sexually explicit language;" and Tasteless, which includes "hard-to-stomach sites, including offensive, worthless or useless sites, grotesque or lurid depiction of bodily harm." (Barlow 4/1/02 at 26-27; Def. Ex. 71; Def. Ex. 300).

174. The Fulton County Public Library, which uses Websense, blocks categories of content which almost certainly do not meet the definitions of CIPA: Hacking, which blocks "sites providing information on or promoting illegal or questionable access to or use of communications equipment and/or software;" Personals and Dating, which blocks sites promoting interpersonal relationships; and Tasteless. (Ewick 4/3/02 at 36-37; Def. Ex. 300)

175. According to the panel appointed by Congress to "identify technological or other methods that will help reduce access by minors to material that is harmful to minors on the Internet," filtering technology "raises First Amendment concerns because of its potential to be over-inclusive in blocking content. Concerns are increased because the extent of blocking is often unclear and not disclosed." (Pls. Ex. 39 at 19-20, 22)

176. In evaluating an information retrieval or classification system, such as the vendors' harvesting and categorization methods, one must evaluate that system's "precision" and "recall." (Nunberg 3/25/02 at 278; Pls. Ex. 70 at 57)

177. Precision is a measure of what percentage of content is classified correctly. For example, if 20% of the sites categorized by N2H2 as pornography are not pornography, then they have an 80% rate of precision. (Nunberg 3/25/02 at 278-79; Pls. Ex. 70 at 57-58)

178. Recall is a measure of what proportion of the actual members of a class or category the classifier has been able to identify. For example, if N2H2 has categorized as pornography only 15% of the pornographic content on the Web, then they have a 15% rate of recall. (Nunberg 3/25/02 at 278-79; Pls. Ex. 70 at 57-58)

179. In any classification system, including blocking products, there is a trade-off between precision and recall. For example, recall can be improved by broader application of the criteria used to classify content, but then the rate of precision would fall; alternatively, the classification criteria could be applied strictly, but then marginal examples of the content sought would not be classified, and recall would suffer. (Nunberg 3/25/02 at 279-81, 3/26/02 at 39-42; Pls. Ex. 70 at 58)

180. The lower a blocking product's precision rate, the greater its rate of overblocking. (Nunberg 3/25/02 at 278-79, 3/26/02 at 39-42, 75; Pls. Ex. 70 at 57-58)

181. The higher a blocking product's recall rate, the greater its rate of overblocking. (Nunberg 3/25/02 at 278-79, 3/26/02 at 39-42, 75; Pls. Ex. 70 at 57-58)

182. To the extent a blocking product increases its rate of recall in order to prevent underblocking, its rate of precision will fall and cause overblocking. (Nunberg 3/25/02 at 278-79; Pls. Ex. 70 at 57-58)

183. Blocking product vendors tend to promote recall over precision, preferring to overblock rather than underblock. (Nunberg 2/26/02 at 43, 46-47)

184. Advances in blocking product technology will not eliminate these inherent limitations on precision and will not prevent overblocking. (Nunberg 3/26/02 at 42-44)

185. Even if the blocking products had a precision rate of 100% using their own definitions, there would still be substantial overblocking based on CIPA's definitions. (Nunberg 3/26/02 at 8-9)

186. Blocking products that use category lists containing IP addresses necessarily overblock, i.e., block Web pages not meeting the engaged category's definition, because blocking an IP address results in the blocking of every Web page that shares that IP address, regardless of content. All sites and pages located at a single IP address, whether they meet a category definition or not, "inherit" the categorization of the page(s) targeted by the blocking products. (Nunberg 3/25/02 at 275-77, 3/26/02 at 28-29; Edelman 4/2/02 at 42-46; Pls. Ex. 70 at 46-51; Pls. Ex. 121 at 25)

187. The choice of some blocking companies to block by IP address is an economically necessary attempt to increase recall in the least labor and cost intensive manner, at the cost of precision. (Edelman 4/2/02 at 44-46)

188. Listing Web sites by IP address is also a way to prevent users from circumventing a site's block by typing in the IP address instead of the URL. (Nunberg 3/26/02 at 28)

189. Blocking products necessarily overblock when they choose to block entire Web sites rather than individual pages of content. Because blocking products will often categorize an entire Web site based only on the content of a small portion of that site's pages, those pages on the site not meeting the category definition will be blocked nevertheless, "inheriting" the categorization of the page(s) targeted by the blocking products. For example, when a blocking product choses to block the entire Playboy Web site, it necessarily blocks all of the interviews, articles and other non-sexually explicit content, as well as the centerfolds. (Nunberg 3/25/02 at 305-09, 3/26/02 at 25-26; Pls. Ex. 70 at 41-45, 69-70; Pls. Ex. 121 at 24)

190. Blocking products must block at the site level to some extent. Considering the blocking product vendors' limited resources and the vast size of the Web, categorizing only at the page level while also achieving a satisfactory rate of recall would be an impossible task. (Nunberg 3/25/02 at 309)

191. Because blocking product vendors generally do not re-review URLs once they have been categorized despite constant change in the Web's content, their products necessarily overblock those categorized sites or pages where the content on which the initial categorization was based is later replaced by content not matching a category definition. (Nunberg 3/25/02 at 303-05; Pls. Ex. 121 at 21)

192. No commercially available blocking product blocks solely text or solely visual depictions. Therefore a Web page containing sexually explicit text and non-sexually explicit visual depictions will be blocked in its entirety as sexually explicit content, as will a page containing non-sexually explicit text and sexually explicit visual depictions. (Pls. Ex. 121 at 28-29; Joint Ex. 8 at 65, 119, 165-68; Joint Ex. 9 at 69, 144; Joint Ex. 10 at 81-82)

193. Tacoma Public Library's use of a custom designed browser, "Web Foot," in conjunction with blocking product Cyber Patrol, allows patrons to view only the text of blocked sites. This product necessarily blocks many pictures that do not meet the engaged categories' criteria. (Biek 3/28/02 at 8, 44-45, 117)

194. Since the automated key-word analysis tools used by blocking programs are unable to grasp subtle distinctions between types of content that would be obvious to a human being, pages or sites categorized by such tools are subject to mis-categorization resulting in overblocking. (Nunberg 3/26/02 at 9, 16-20; Pls. Ex. 121 at 23-24)

195. Overblocking is also caused when blocking product vendors' employees are "over-zealous" in their application of category definitions, classifying as pornographic pages or sites containing even a hint of sexually explicit material. (Nunberg 3/26/02 at 21-25)

196. Web sites offering anonymizer, translation or caching services can be used to circumvent blocking products and access Web pages that, if access were attempted directly, would be blocked. Sites that enable circumvention may be referred to as "Loophole" sites. (Nunberg 3/26/02 at 29-36; Pls. Ex. 121 at 26-27)

197. Blocking products that categorize and block Web pages offering access to anonymizer, translation or caching services in order to prevent such circumvention necessarily overblock in terms of both CIPA's definitions and the blocking products' own category definitions for sexually explicit content, because such pages generally do not contain any sexual content. Blocking the search engine Google's cache pages alone would prevent access to millions of pages of speech, some unavailable anywhere else. (Nunberg 3/26/02 at 29-36; Pls. Ex. 121 at 26-27)

198. To the extent that translation sites are blocked, English-speaking users will indirectly be blocked from accessing that 30% (and growing) portion of the Web that is non-English. (Nunberg 3/26/02 at 36-38)

199. Although blocking products are generally unable to prevent access to specific content delivered via Web-based email and chat platforms, and are also unable to prevent access to specific content delivered via non-Web Internet protocols, they do offer customers the option of blocking all use of such platforms and protocols regardless of content. When those categories are enabled, overblocking of protected speech delivered via those platforms or protocols necessarily results. (Edelman 4/2/01 at 58-59; Pls. Ex. 125 at 1-6)

200. In order to identify specific instances of overblocking, plaintiffs' expert Benjamin Edelman first compiled a database of Web pages to be tested, which he did by making use of the Yahoo! Internet directory. Using software of his own design, Mr. Edelman was able to retrieve the URLs of all the Web pages in the Yahoo! directory. (Edelman 4/2/02 at 18-19, 23-52; Pls. Ex. 121 at 5)

201. Mr. Edelman, using software of his own design, ran each URL discovered in the Yahoo! directory through a service offered by the search engine Google called "What's Related." "What's Related," when given a URL to a particular Web page, will return a list of other Web pages likely to be similar in content to the one entered. (Edelman 4/2/02 at 20, 26; Pls. Ex. 121 at 5-6)

202. Mr. Edelman excluded from his testing database pages in Yahoo! categories likely to contain sexually explicit content, pages in Google's "adult" category, and specific URLs provided by counsel for the plaintiffs. (Edelman 4/2/02 at 18-19, 20, 23-25, 26; Pls. Ex. 121 at 5)

203. By using the Yahoo! directory and the Google "What's Related" features in the described manner, Mr. Edelman was able to compile a database of approximately 500,000 distinct URLs to be tested for possible overblocking. (Edelman 4/2/02 at 21)

204. On four separate computers, Mr. Edelman installed four leading blocking products: Cyber Patrol, N2H2, Smart Filter, and Websense. Mr. Edelman then enabled the following categories for blocking: for Cyber Patrol, the category Adult/Sexually Explicit; for N2H2, the categories Adults Only, Nudity, Pornography and Sex, and also the exception categories Education, For Kids, History, Medical, Moderated, and Text/Spoken Only; for Smart Filter, Sex, Nudity, Mature and Extreme; and for Websense, Adult Content, Nudity and Sex. (Edelman 4/2/02 17-18, Pls. Ex. 121 at 4)

205. Mr. Edelman initiated an automated process to test each Web page in his database on each of the four blocked computers. That process created a log indicating which of the approximately 500,000 Web pages tested were blocked by each of the four blocking products. (Edelman 4/2/02 at 21-23; Pls. Ex. 121 at 6, 10)

206. Mr. Edelman's tests identified 6777 distinct URLs belonging to Web pages that were blocked by at least one of the four blocking products. (Edelman 4/2/02 at 29-30; Pls. Ex. 121 at 10)

207. Of the identified 6777 blocked pages, 4961 were blocked by N2H2; 1590 were blocked by SmartFilter; 1982 were blocked by Cyber Patrol; and 2188 were blocked by Websense. 398 of the 6777 blocked pages were blocked by all four blocking products. (Pls. Ex. 121 at 11-12)

208. 395 of the blocked pages identified by Mr. Edelman were archived on the CD-ROM identified as Plaintiffs' Exhibit 122. Mr. Edelman also archived internal links on these Web pages. (Edelman 4/2/02 at 29-30, 36-7; Pls. Ex. 121 at 10; Pls. Ex. 122; Pls. Ex. 124)

209. Mr. Edelman archived the remaining 6,382 blocked pages on the CD-ROM identified as Plaintiffs' Exhibit 123; he did not archive internal links for these pages. (Edelman 4/2/02 at 29-30, 36-37; Pls. Ex. 121 at 10; Pls. Ex. 123)

210. Mr. Edelman also tested and archived sites published by plaintiffs (specifically, the Web sites for AfraidtoAsk.com, the Alan Guttmacher Institute, the Naturist Action Committee, Out in America, PlanetOut, Planned Parenthood, Jeffrey Pollock for Congress, Safer Sex, and Wayne Parker for Congress) and found that all of those sites were blocked by at least one blocking product. (Edelman 4/2/02 at 20-21; Pls. Ex. 122)

211. For each Web page archived on the CD-ROMs identified as Plaintiffs' Exhibits 122 and 123, Mr. Edelman also included the page title (as retrieved by Google and manually verified), the page description (as retrieved by Google, if any), the Yahoo! categorizations (if any), and the Google categorizations (if any). He also identified which blocking products blocked which pages, on what dates they were blocked, and under what category or categories they were blocked. (Pls. Exs. 122-23)

212. Mr. Edelman reviewed the contents of all Web pages archived on the CD-ROM identified as Plaintiffs' Exhibit 122, in addition to several hundred of the pages archived on the CD-ROM identified as Plaintiffs' Exhibit 123. In his opinion, the content of all of those Web pages in Plaintiffs' Exhibit 122, and the majority of those he examined from Plaintiffs' Exhibit 123, did not meet the definitions of the enabled categories and thus were overblocked. (Edelman 4/2/92 at 39, 71, 89; Pls. Exs. 165-69)

213. Plaintiffs' expert Anne Lipow has worked as a professional librarian or librarian consultant for over 40 years. Ms. Lipow examined 194 Web pages found by Mr. Edelman to be blocked by at least one blocking product. She found that the contents of all but one were appropriate for use in a public library by patrons of any age, with the remaining Web page also being appropriate for adult library patrons. The contents ranged from Web pages offering highly informative resources with reliable information or artistic accomplishment to pages unlikely to meet a library's physical collection standards but that still contain useful information for some library patrons. (Lipow 4/2/02 at 130, 149-55, 171-73; Pls. Ex. 27 at 1-4; Pls. Ex. 122; Pls. Ex. 124; Pls. Ex. 128-35)

214. Plaintiffs' expert Dr. Michael Ryan is currently the director of the Rare Book and Manuscript Library at the University of Pennslvania and was formerly a librarian at Stanford University and the University of Chicago. Dr. Ryan examined more than 200 Web pages found by Mr. Edelman to be blocked by at least one blocking product, and determined that all of them were legitimate reference and information sources providing a variety of information and content

that would be appropriate in a library setting. (Ryan 3/26/02 at 162-63, 182-83, Pls. Ex. 115 at 1-2; Pls. Exs. 116-19)

215. Plaintiffs' expert Dr. Joseph Janes is an assistant professor at the University of Washington's Information School and the former director of the Internet Public Library. With the aid of a team of graduate students with experience, coursework, or backgrounds in reference and collection development, Dr. Janes examined a statistically valid sample of 699 of 6,775 Web pages that Mr. Edelman found to be blocked by at least one blocking product. Of those 699 sites, Dr. Janes determined that 474, or approx. 67.8%, were of potential value or use in a library setting. He was then able to infer that 64.7% to 70.9%, or between 4,383 and 4,803 of the entire set of 6,775 blocked pages, were also of potential value or use in a library setting. (Janes 3/26/02 at 112-15; Pls. Ex. 109 at 3-7)

216. In October 2001, Mr. Edelman published the results of his initial testing on his Web site. In February and March 2002 he repeated his testing of the 6,777 URLs originally found to be blocked by at least one of the blocking products, in order to determine whether and to what extent the blocking product vendors had corrected the mistakes that he publicized. (Edelman 4/2/02 at 49-52, Pls. Ex. 126 at 1-2)

217. Of those URLs blocked by N2H2 in the October 2001 testing, 55.10% remained blocked when tested by Mr. Edelman in March 2002. (Edelman 4/2/02 at 49-53, Pls. Ex. 126 at 1-2)

218. Of those URLs blocked by Websense in the October 2001 testing, 76.28% remained blocked when tested by Mr. Edelman in February 2002. (Edelman 4/2/02 at 49-53, Pls. Ex. 126 at 1-2)

219. Of those URLs blocked by SurfControl's Cyber Patrol product, only 7.16% remained blocked, i.e., Cyber Patrol had unblocked almost 93% of the Web pages originally blocked. Because the results posted to his Web site were accessed by an employee of Cyber Patrol, Mr. Edelman inferred that Cyber Patrol had determined that 93% of all 6,777 pages, or 6,302 Web pages, were originally wrongly blocked by the product. (Edelman 4/2/02 at 49-52, Pls. Ex. 126 at 1-2)

220. The Web pages identified as blocked in 221-263 infra are wrongly blocked whether measured by the blocking products' criteria, the libraries' criteria, or by the specific requirements of CIPA.

221. Plaintiffs' Exhibits 71 ("Male Sex Work & Aids in Canada") and 72 ("An Open Letter to Senator Hatch") are Web pages that were most likely overblocked because the sites on which they appeared were categorized in their entirety. (Nunberg 3/26/02 at 26-28; Pls. Exs. 71-72)

222. Plaintiffs' Exhibits 73 (the "Kitty Porn" Web site), 74 (the Web site of the Center for Sex Research at California State University, Northridge), 80 (promotional Web site for the feature film "The Opposite of Sex"), and 167 ("Cinewomen", a Web site for women in the film industry) were most likely overblocked due to errors by automated key-word analysis tools. (Nunberg 3/26/02 at 16-21; Edelman 4/2/02 at 47-48; Pls. Exs. 73-75, 80, 167)

223. Plaintiffs' Exhibits 77 (a sex column entitled "Body Language" from the online magazine Salon.com) and 79 (Teenwire.com's "Ask the Experts" page) are Web pages that were most likely overblocked due to the over-zealousness of blocking product vendor employees. (Nunberg 3/26/02 at 22-25; Pls. Exs. 77, 79)

224. The Web page http://www.afraidtoask.com/index.html was found to be blocked by N2H2, Cyber Patrol and Websense in the Edelman study. The blocked page is the homepage of a medical question and answer site, AfraidToAsk.com, offering information on personal health issues. (Pls. Exs. 110, 124)

225. The Web page http://www.afraidtoask.com/cgi-bin/Ultimate.cgi was found to be blocked by N2H2, Cyber Patrol and Websense in the Edelman study. The blocked page is the bulletin board section of the AfraidToAsk.com Web site, where visitors can post and respond to questions about personal health issues. (Pls. Exs. 111, 124)

226. The Web page http://www.afraidtoask.com/woman/vagina.html was found to be blocked by N2H2, Cyber Patrol and Websense in the Edelman study. The blocked page is the female genitalia guide of the AfraidToAsk.com Web site, featuring a photograph and description of the vagina, the vulva and internal genitalia. (Pls. Exs. 112, 124)

227. The Web page http://www.afraidtoask.com/members/mgenitalcompareself.html was found to be blocked by N2H2, Cyber Patrol and Websense in the Edelman study. The blocked page is the male genitalia guide of the AfraidToAsk.com Web site, featuring photographs and data about different size penises and erections. (Pls. Exs. 113, 124)

228. The Web page http://www.afraidtoask.com/breast/breastsize.html was found to be blocked by N2H2, Cyber Patrol and Websense in the Edelman study. The blocked page is the breast guide of the AfraidToAsk.com Web site, featuring photographs and explanations of breast size and shape, asymmetry, inverted nipples, and nipple hair. (Pls. Exs. 114, 124)

229. The Web page http://www.washingtonsquarepark.org was found to be blocked by Websense in the Edelman study. The blocked page is the home page of a not for profit community site for Washington Square Park in New York City, with links to upcoming events, park history, photography of the area and information on volunteering at the Web site or in the park. (Pls. Exs. 116, 124)

230. The Web page http://www.lyghtforce.com/HomeopathyOnline/issue5/articles/ritchie_orange.html was found to

be blocked by N2H2 in the Edelman study. The blocked page, part of the Homeopathy Online Web site, is an article titled "What is Agent Orange? Chemicals of the Vietnam War Era." (Pls. Exs. 117, 123)

231. The Web page http://www.pacificcoast.net/~many moons/menstruation.html was found to be blocked by N2H2 in the Edelman study. The blocked page features links to other informational and educational Web sites about menstruation. (Pls. Exs. 118, 124)

232. The Web page http://www.ixpres.com/ag1caf/blackcat was found to be blocked by Cyber Patrol in the Edelman study. The Web site is the Black Cat PBYs Web site; a site devoted to U.S. Navy PBY Catalinas fighting in the Pacific during World War II. (Pls. Exs. 119, 124)

233. The Web page http://www.bi.org was found to be blocked by N2H2 in the Edelman study. The Web site serves the bisexual community with links to international bisexual community groups and networks, news, resource centers, health and welfare organizations, mailing lists etc. (Pls. Exs. 124, 128)

234. The Web page http://www.cancerftr.wkmc.com was found to be blocked by Websense in the Edelman study. The Web site for the Willis-Knighton Cancer Center in Shreveport, Louisiana features information on staff, equipment, patient information, links/clinical trials, treatments, news articles, and directions/map to the center. (Pls. Exs. 124, 129)

235. The Web page http://www.alphasearch.org was found to be blocked by N2H2 in the Edelman study. The Web site is a search engine featuring news links and a variety of search categories. (Pls. Exs. 124, 130)

236. The Web page http://www.barcelonareview.com was found to be blocked by N2H2 in the Edelman study. The Web site is a journal of international contemporary fiction and poetry featuring excerpts from current issues, back issues and book reviews, and information on submissions. (Pls. Exs. 124, 131)

237. The Web page http://www.girlsplace.com was found to be blocked by Smartfilter in the Edelman study. The Web site is devoted to providing news, health and recreational information to girls. (Pls. Exs. 124, 132)

238. The Web page http://www.albertyflyfish.com/index.htm was found to be blocked by N2H2 in the Edelman study. The Web site is for the Southern Alberta Fly Fishing Outfitters in Canada. The Web site provides information on fly fishing rivers, trips, tours, packages and accommodations, reviews, equipment and contacts. (Pls. Exs. 124, 133)

239. The Web page http://www.muchlove.org was found to be blocked by Cyber Patrol and Websense in the Edelman study. The Web site is for a Southern California animal

rescue organization featuring information on and photographs of available dogs and cats, adoption locations, spay and neuter information, training tips, volunteer information, and "happy ending" stories. (Pls. Exs. 124, 134)

240. The Web page http://www.americanfootcare.com was found to be blocked by N2H2 in the Edelman study. The Web site is for a New York City podiatry and foot surgery office, with information on the doctors, the practice, foot conditions, office policies and footcare products. (Pls. Exs. 124, 135)

241. The Web page http://www.kidshealth.org/teen/sexual_health/stds/std.html was found to be blocked by Smartfilter in the Lemmons study. The Web page information and statistics on sexually transmitted diseases is part of a teen health Web site. (Pls. Ex. 160A)

242. The Web page http://www.lesbian.org was found to be blocked by Safeserver and Cyber Patrol in the Lemmons study. The Web page provides links to lesbian politics and activism sites, lesbian arts and culture sites and other links of interest, and is part of a greater lesbian resource Web site. (Pls. Ex. 160B)

243. The Web page http://www.condommania.com was found to be blocked by SafeServer and Cyber Patrol in the Lemmons study. The Web page is the home page to a Web site that sells condoms, lubricants, and other safer-sex themed products. (Pls. Ex. 160C)

244. The Web page http://www.postfun.com/pfp/homosexual.html was found to be blocked by SafeServer and N2H2 in the Lemmons study. The Web page features the article, "The Bible and the Homosexual," and explains certain scriptural references and common interpretations. (Pls. Exs. 123, 160D)

245. The Web page http://www.sexrespect.com was found to be blocked by Cyber Patrol and Smartfilter in the Lemmons study. The Web page is part of the Sex Respect Web site, an abstinence education program. (Pls. Exs. 123, 160E)

246. The Web page http://www.lesbian.com was found to be blocked by Cyber Patrol in the Lemmons study. The Web page is part of a lesbian resource site with links to activism/politics, anti-oppression, arts, business and economy, computers/technology, family and parenting, gender, literature, shopping etc. (Pls. Ex. 160F)

247. The Web page http://www.bored.com was found to be blocked by Cyber Patrol and the Tacoma Public Library in the Finnell study. The Web page is part of a Web site devoted to providing links to the "most interesting sites on the Web." (Pls. Ex. 162A)

248. The Web page http://www.juggling.org was found to be blocked by Cyber Patrol and the Tacoma Public Library in the Finnell study. The Web page is part of a Web site devoted to providing juggling information services, with links to news, shopping, articles, software, tips, picture gallery, festivals, organizations, club meetings etc. (Pls. Ex. 162B)

249. The Web page http://www.altheWeb.com was found to be blocked by Websense and the Westerville library in the Finnell study. The Web page provides a brief biography of former Vice President Gore. (Pls. Ex. 162C)

250. The Web page http://www.beastmaster.com was found to be blocked by Websense and the Westerville library in the Finnell study. The Web page is the homepage of the Beastmaster television show Web site, with links to episodes, cast, animal, video, fan and show time information. (Pls. Ex. 162D)

251. The Web page http://sportsillustrated.cnn.com was found to be blocked by N2H2 and the Greenville County Library System in the Finnell study. The Web page is the online partnership between CNN and Sports Illustrated magazine featuring the latest sports scores and news stories. (Pls. Ex. 162E)

252. The Web page http://telephonedirectories.withoneclick.com was found to be blocked by N2H2 and the Greenville County Library System in the Finnell study. The Web page provides a variety of online telephone directory search options. (Pls. Ex. 162F)

253. The Web page http://www.cosmopolitan.com was found to be blocked by N2H2 and the Greenville County Library System in the Finnell study. The Web page is the cover of the online version of Cosmopolitan magazine. (Pls. Ex. 162G)

254. The Web page http://www.thesoccersite.co.uk was found to be blocked by N2H2 and the Greenville County Library System in the Finnell study. The Web page is a soccer fan shopping site. (Pls. Ex. 162 H)

255. The Web page http://www.dmu.ac.uk/~smoggan/vdub.ring/images/vwring.gif was found to be blocked by N2H2 and the Greenville County Library System in the Finnell study. The Web page features the Volkswagen corporate logo, and is part of the De Montfort University in England Web site. (Pls. Ex. 162I)

256. The Web page http://www.womens-health.co.uk/ectopic.htm was found to be blocked by N2H2 and Greenville County Library System in the Finnell study. The Web page provides information on ectopic pregnancies and is part of a women's health Web site. (Pls. Ex. 162J)

257. The Web page http://www.goodbyemag.com/nov97 was found to be blocked by N2H2 and Greenville County Library System in the Finnell study. The Web page is the November-December 1997 issue of the Goodbye Magazine, an online magazine devoted to obituaries. (Pls. Ex. 162K)

258. The Web page http://www.hemlbros.com/index.htm was found to be blocked by Websense in the Edelman study. The Web page describes the book "Piano Playing and Songwriting in 3 lessons." (Pls. Exs. 123, 165)

259. The Web page http://www.lakewood-lancers.org/index.htm was found to be blocked by N2H2 in the Edelman study. The Web page provides alumni listing for Lakewood High School in Lakewood, California. (Pls. Exs. 123, 166)

260. The Web page http://www.cinewomen.org/index.htm was found to be blocked by Cyber Patrol in the Edelman study. The Web page provides the mission statement for a nonprofit organization of professionals in the entertainment industry supporting the advancement of women, as well as links to meetings and events, subgroups, classifieds, and film festivals/competitions/funds. (Pls. Exs. 123, 167)

261. The Web page http://www.nucleus.com/~fms/index.htm was found to be blocked by Cyber Patrol in the Edelman study. The Web page is part of the Firefighters Museum Society in Calgary, Canada Web site. (Pls. Exs. 123, 168)

262. The Web page http://www.federo.com/main.htm was found to be blocked by N2H2 in the Edelman study. The Web page is part of a Web site devoted to online information and resource tools on federalism in Uganda. (Pls. Exs. 123, 169)

263. The Web page of the Republican National Committee was found to be blocked by N2H2 and the Tulsa Public Library in Tulsa, Oklahoma. (Joint Ex. 5 at 59)

CIPA IS INEFFECTIVE AT BLOCKING ACCESS TO THE MATERIAL IT INTENDS TO RESTRICT

264. The blocking products do not block every site that meets their criteria. (Joint Ex. 8 at 13; Joint Ex. 10 at 14)

265. Blocking products fail to block access to a substantial amount of content on the Internet that CIPA defines as obscenity, child pornography, or harmful to minors. (Nunberg 3/26/02 at 256, 312-13; Joint Ex. 9 at 8; Joint Ex. 8 at 13; Joint Ex. 10 at 8)

266. Many of the libraries proffered by defendants that use blocking products testified that there are instances of underblocking, i.e., failing to block sites that meet the criteria of the blocking product and/or meet the definitions of the statute. (Belk 3/29/02 at 63-64; Biek 3/29/02 at 115; Barlow 4/1/02 at 31-32; Joint Ex. 5 at 30-31; Joint Ex. 3 at 95; Joint Ex. 7 at 45; Joint Ex. 1 at 28-29)

267. Experts for defendants and for plaintiffs identified examples of underblocking. (Hunter 3/26/02 at 210, 212-13, 214, 224-25; Lemmons 3/28/02 at 179; Finnell 4/1/02 at 46; Def. Ex. 179)

268. No currently available blocking product blocks all Web pages containing material that matches that vendor's content category definitions. (Pls. Ex. 121 at 27-8; Joint Ex. 8 at 13, 164; Joint Ex. 9 at 93; Joint Ex. 10 at 14)

269. To the extent that the Web is not publicly indexable, the blocking product vendors will not locate and therefore cannot categorize its content, and the underblocking of hundreds of thousands of sexually explicit Web pages will necessarily result. (Stips. 253, 304-05; Nunberg 3/25/02 at 266-69)

270. To the extent that search engines and directories return only a limited number of sites in their search results, blocking product vendors' attempts at harvesting sites for review by using such engines or directories will also be limited. (Nunberg 3/25/02 at 291-93).

271. Many examples of underblocking are caused by blocking product vendors' inability to locate and accurately categorize Web pages in all languages. (Nunberg 3/26/02 at 36-38; Pls. Ex. 121 at 27-28; Joint Ex. 9 at 115-16; Joint Ex. 10 at 51-53, 107)

272. Because blocking products cannot identify and block specific content delivered via Web-based e-mail and chat platforms or by non-Web Internet Protocols, content meeting a category definition delivered via those platforms or protocols will not be blocked, and underblocking will necessarily result. (Edelman 4/2/02 at 58-59; Pls. Ex. 121 at 30-32; Pls. Ex. 125 at 1-6)

273. Blocking products that use category lists not containing IP addresses necessarily underblock, i.e., fail to block Web pages meeting the engaged category's definition, because users can look up and use the IP address of the categorized domain name address to access the blocked Web page. (Stips. 244-47; Edelman 4/2/02 at 45-46)

274. Blocking products that do not categorize and block Web pages offering anonymizer, translation or caching services necessarily underblock, because users can use such services to access blocked Web pages. (Nunberg 3/26/02 at 29-36; Pls. Ex. 121 at 26-27; see also Stips. 256-57, 259)

275. Underblocking is inevitable due to vast amount of content on Web and the speed at which it changes and grows. (Stip. 253; Nunberg 3/25/02 at 298)

276. Underblocking is inevitable due to pages that have been reviewed and/or categorized and then change their content. (Finnell 4/1/02 at 138; Joint Ex. 9 at 10; see also Stips. 317-23)

CIPA'S UNBLOCKING PROVISION IS UNWORKABLE AND WILL DETER PATRONS FROM ACCESSING CONSTITUTIONALLY PROTECTED SPEECH

277. Requiring library patrons to ask for a Web site to be unblocked will deter many patrons because they are embarrassed, or want to protect their privacy or remain anonymous. (Reed 3/24/02 at 181; Morgan 3/25/02 at 49-50; Cooper 3/25/02 at 137; Rood 3/26/02 at 147-48; Brown 3/26/02 at 156; Bertman 3/26/02 at 322-23; Lipow 4/2/02 at 147-48;)

278. Requiring library patrons to ask for a Web site to be unblocked will deter many patrons because they do not want to give up their limited time on the computer. (Morgan 3/25/02 at 49-50; Cooper 3/25/02 at 137)

279. Even where library patrons are told that they may request anonymous unblocking, they will be deterred because they will reasonably believe that the request is not anonymous. (Biek 3/28/02 at 24-25, 119-120, 134)

280. The Tacoma Public Library claims to permit anonymous unblocking requests, but patrons are twice told before making such a request that they have no expectation of privacy. (Biek 3/28/02 at 119-21, 134) Moreover, the library keeps records that enable the library to know which patron sought unblocking and which site they sought to have unblocked. (Biek 3/28/02 at 24-25)

281. The Fulton County, Indiana, library receives only about 6 unblocking requests each year. (Ewick 4/3/02 at 34)

282. The Greenville Public Library in Greenville, South Carolina, has received only 28 unblocking requests since August 21, 2000. (Belk 3/29/02 at 52)

283. The Westville Public Library in Westerville, Ohio has received fewer than 10 unblocking requests since 1999. (Barlow 4/2/02 at 34)

284. Librarians do not know what would qualify for an unblocking exception under CIPA. (Morgan 3/25/02 at 47; Cooper 3/25/02 at 136; Hamon 3/25/02 at 227)

285. Requiring librarians to make unblocking decisions will make some librarians embarrassed and uncomfortable. (Bertman 3/26/02 at 323; see also Belk 3/29/02 at 60; Barlow 4/1/02 at 37)

286. Requiring librarians to unblock Web sites only for "bona fide research or other lawful purposes" will result in inconsistent and arbitrary decision-making by librarians and by the non-professional staff who often are the patrons' contact with the library. (Cooper 3/25/02 at 134, 136; Hamon 3/25/02 at 227)

287. Librarians are generally not trained to make judgments as to legal categories such as obscenity, child pornography, and harmful to minors. (Joint Ex. 1 at 42-43; Joint Ex. 4 at 25,

69; Joint Ex. 5 at 49; Joint Ex. 7 at 60; Morgan 3/25/02 at 47; Biek 3/28/02 at 112; Sudduth 3/28/02 at 267; Lipow 4/2/02 at 160; Ewick 4/3/02 at 20)

288. With one exception, all of the libraries proffered by defendants were unblocking on the basis of categories established by the companies or the library, not by the categories established by CIPA. (Joint Ex. 1 at 42-43; Joint Ex. 2 at 35-36; Joint Ex. 3 at 77; Joint Ex. 4 at 25-26, 69; Joint Ex. 5 at 22, 26, 32-34; Biek 3/28/02 at 111-12; James 3/29/02 at 15; Belk 3/29/02 at 58)

289. The Westerville Public Library in Westerville, Ohio, claimed to unblock sites based on whether the content was legal under the state obscenity law. In fact, the Westerville library blocked access by both adults and minors to categories such as tasteless and partial nudity, and only unblocked sites that were not "pornographic." (Barlow 4/1/02 at 26-28, 35) In addition, the library did not know it was exempted from the state law requirements. (Barlow 4/1/02 at 45-46)

290. In all of the libraries proffered by defendants, unblocking decisions are not made instantly but over a period ranging from 24 hours to over a week. (Joint Ex. 1 at 26-28, 53; Joint Ex. 2 at 23; Joint Ex. 5 at 35; Joint Ex. 6 at 59, 61-63; Biek 3/28/02 at 114)

291. None of the libraries proffered by Defendants allowed unrestricted access to the Internet pending a determination of the validity of a Web site blocked by the blocking programs. A few of defendants' proffered libraries did assert that individual librarians would have the discretion to allow a patron to have full Internet access on a staff computer upon request, but none asserted that full access was mandatory, and patron access is supervised in every instance. (See e.g. Belk 3/29/02 at 57, 61-62, 72; Ewick 4/3/02 at 58)

292. None of the libraries proffered by Defendants make differential unblocking decisions based on the patrons' age. In every instance, unblocking decisions are made identically for adults and minors. Unblocking decisions even for adults are based on suitability of the Web site for minors. (Joint Ex. 1 at 48-49; Joint Ex. 4 at 14, 45, 70; Joint Ex. 5 at 34; Biek 3/28/02 at 113; James 3/29/02 at 15; Belk 3/29/02 at 71; Barlow 4/1/02 at 42, 44)

293. Only one of the libraries proffered by Defendants uses blocking programs on staff computers. (Ewick 4/3/02 at 31) At the other libraries, all staff terminals provide unblocked access although only some staff members have authority to unblock Web sites upon request by a patron. (Belk 3/29/02 at 70-71)

294. It is contrary to traditional library practice for librarians to inquire into a patron's purpose in seeking information, particularly when that inquiry may be used to deny the patron access to information based on disapproval of its content. (Joint Ex. 3 at 91; Joint Ex. 4 at 33-36, 78-79; Cooper 3/25/02 at 115-18, 132-33; Reed 3/25/02 at 175; James 3/29/02 at 24; Lipow 4/2/02 at 137, 141-42, 144, 159-60, 169-70; Ewick 4/3/02 at 16)

295. Libraries that currently use blocking programs have refused to unblock material that can be found in their print collection and that is available to every patron regardless of age. (Pls. Exs. 66K-M; Joint Ex. 2 at 15 and 19-20; Joint Ex. 4 at 60-64; Joint Ex. 5 at 49-50; Biek 3/28/02 at 117, 129-32, 134-35; Barlow 4/1/02 at 5-6, 56-57; James 3/29/02 at 20, 23; Ewick 4/3/02 at 21; see also Cooper 3/25/02 at 129; Reed 3/25/02 at 173-74; Hamon 3/25/02 at 210)

296. Libraries that currently use blocking programs have made unblocking decisions that are sometimes inconsistent with library policy. (Belk 3/29/02 at 44 (agrees they block non-pornographic nudity but "hope[s]" artistic nudity not blocked); 48-49 (policy blocks chat; he has unblocked chat); at 62 (plaintiff Web sites which contain graphic images of nudity would be unblocked at the library though the library blocks non-pornographic nudity); Ewick 4/3/02 at 22, 67 (would not block The Joy of Sex even though it violates the terms of library policy)).

297. It is not technologically possible to unblock only those images that are not obscene, child pornography or harmful to minors. (Nunberg 3/25/02 at 93; see also Joint Ex. 5 at 63; Joint Ex. 7 at 92; Biek 3/28/02 at 117; James 3/29/02 at 15; Edelman 4/2/02 at 58-59)

298. Providing multiple people with unblocking authority is technologically infeasible and specifically cautioned against by some blocking programs. (Hamon 3/25/02 at 226; Edelman 4/2/02 at 60-62; Finnell 4/3/02 at 77) The self-serving testimony of the blocking companies to the contrary is unpersuasive. The testimony of some librarians that it is possible is unpersuasive because none actually tried to do so. (Joint Ex. 5 at 53)

299. It is not technologically possible to unblock a site on one Internet access terminal and not all others. The self-serving testimony of the blocking software companies to the contrary is unpersuasive. The testimony of some librarians that it is possible is unpersuasive because none actually tried to do so. (Joint Ex. 1 at 48-49; Barlow 4/1/02 at 33; Ewick 4/3/02 at 33 (can turn off all blocking at his own computer), 57 (has never tried unblocking a Web site only for a particular computer terminal); Edelman 4/2/02 at 64-65)

300. It is not technologically possible to unblock a site for a pre-designated time period only and to have it automatically blocked again after the period expires. (Edelman 4/2/02 at 65-66)

301. The customization features offered by the blocking programs, including the ability to unblock sites on the programs list of blocked sites, require technical expertise equivalent to a systems administrator. (Edelman 4/2/02 at 60-61)

302. Some libraries, especially smaller libraries in rural areas, do not have systems administrators or technical experts on staff. (Hamon 3/25/02 at 214)

LIBRARIES USE A VARIETY OF EFFECTIVE MEANS TO HELP PATRONS FIND CONTENT THEY WANT AND AVOID UNWANTED AND ILLEGAL CONTENT

303. Many public libraries provide training or guidance to patrons on how to use the Internet. (Stip. 267; Cooper 3/25/02 at 91, 109, 111-14, 118-19; Reed 3/25/02 at 181-83; Hamon 3/25/02 at 214; Chelton 4/2/02 at 190-91; Pls. Exs. 29, 34, 103, 104)

304. Public libraries held public meetings, consulted with their Boards, analyzed a variety of options, and consulted with other library professionals, before making a decision about whether or not they would use blocking programs on their Internet access terminals. (Morgan 3/25/02 at 16-17, 29-30; Cooper 3/25/02 at 106, 114; Reed 3/25/02 at 168; Hamon 3/25/02 at 224-25)

305. Public libraries often select certain "recommended Web sites" to which they provide links on the library's Web site. 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 does not preclude patrons from attempting to access other Internet Web sites. (Stip. 268; Morgan 3/25/02 at 34-35; Cooper 3/25/02 at 99-102, 118; Chelton 4/2/02 at 190; Pls. Ex. 34)

306. Approximately 95% of public 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. (Stip. 269; Morgan 3/25/02 at 36; Reed 3/25/02 at 167-69; Chelton 4/2/02 at 206; Pls. Exs. 7-8, 30-34, 36-39, 41-43, 61, 64, 103, 104)

307. Some public libraries provide patrons with the option of using a blocking program, and allow patrons to decide whether to engage the program when they or their children access the Internet. (Stip. 272; Morgan 3/25/02 at 26-29; Cooper 3/25/02 at 103; Chelton 4/2/02 at 191; Pls. Ex. 62)

308. In the Fort Vancouver Public Library, in Fort Vancouver, Washington, approximately 80% of all patrons have chosen unfiltered access to the Internet when presented with the option of using blocking programs. (Morgan 3/25/02 at 31)

309. Public libraries who do not mandate the use of blocking programs on all Internet access terminals have had few problems associated with providing unblocked Internet access. In the Fort Vancouver Public Library, of a total of about 399 complaints received per year, only 10 involved complaints about content on the Internet, and only 2 involved complaints about behavior related to sexually explicit content on the Internet. (Morgan 3/25/02 at 37, 39-45; Pls. Ex. 63) The Multnomah County Library received a total of 2,200 written complaints between July 2000 and July 2001; only 22 complaints involved content on the Internet. (Cooper 3/25/02 at 121) The Norfolk Public Library receives about 2500 complaints per year, and only approximately 20 involves sexually explicit content on the Internet. (Reed 3/25/02 at 170-71)

310. Federal Depository Libraries, such as the Norfolk Public Library in Norfolk, Virginia, must agree not to filter Internet searches for government documents because blocking programs could block out important and useful information. (Reed 3/25/02 at 168)

311. Some public libraries use privacy screens on their Internet access terminals which prevent passers-by from viewing the content being accessed by the computer user. (Cooper 3/25/02 at 119, 140; Pls. Ex. 34)

312. Some public libraries place their Internet access terminals in sunken desktops which prevent passers-by from viewing the content being accessed by the computer user. (Morgan 3/25/02 at 33; Pls. Ex. 34)

313. Some public libraries require parental consent before allowing patrons under a certain age to access the Internet. (Pls. Ex. 34)

314. Some public libraries require parents to be present when their children under a certain age access the Internet.

315. Some public libraries impose time limits on their Internet access terminals. (Morgan 3/25/02 at 30; Reed 3/25/02 at 167)

316. Public libraries have rules that prohibit disruptive behavior in the library. (Cooper 3/25/02 at 122; Chelton 4/2/02 at 190-91; Pls. Exs. 15, 106)

317. Public libraries cooperate with law enforcement when there is reason to believe that a crime has been committed in their libraries. (Morgan 3/25/02 at 36-37; Cooper 3/25/02 at 123-24; Hamon 3/25/02 at 217-23; Pls. Exs. 105-06)

THE IDENTITY OF PLAINTIFFS' TESTIFYING FACT WITNESSES

318. The Fort Vancouver Regional Library District is located in southwest Washington, and covers 4,200 miles. The library covers 12 cities, 3 counties, and the unincorporated areas of 3 counties. It serves 372,000 people and has 238,000 registered borrowers. (Morgan 3/25/02 at 9)

319. The Fort Vancouver Regional Library District provides access to over 700,000 books, periodicals, videos, pamphlets and documents. (Morgan 3/25/02 at 9)

320. The Fort Vancouver Regional Library District also provides Internet service, word processing, CD ROM based story stations for young children, programming for all ages and access to electronic databases featuring over 2,000 magazines and a number of encyclopedias and specialized reference books. (Morgan 3/25/02 at 9)

321. The Fort Vancouver Regional Library District Board is a public board. The 7 board members are appointed by elected county commissioners. (Morgan 3/25/02 at 22).

322. The Multnomah County Public Library is in Multnomah County, Oregon. The Multnomah County Public Library serves the entire county, 660,000 people, with 17 branches and a central library in downtown Portland, OR. (Cooper 3/25/02 at 85)

323. 82% of the people in Multnomah County have library cards. Last year they checked out 14 million books and other library materials. (Cooper 3/25/02 at 85)

324. Multnomah County Public Library is a county department reporting to a board of county commissioners. The county commissioners are the legislative policy making group for the library. (Cooper at 3/25/02 at 88)

325. The Multnomah County library board is appointed by the county chair and confirmed by the other commissioners. The library board is an advisory board to the library and to the board of county commissioners on any matters relating to the library. (Cooper 3/25/02 at 88)

326. Multnomah County Public Library has 470 public access computers with Internet and 450 for staff. In the last fiscal year the library had 120,000 unique Internet users. (Cooper 3/25/02 at 96-97)

327. The Multnomah County Public Library has some resource computers, which provide access to the library catalog, subscription databases, the library's home pages and various aides to help users find the information they need but do not allow independent Internet access. The library also has a series of computers that provide all the services listed above in addition to independent Internet access. (Cooper 3/25/02 at 98)

328. 20% of the publicly accessible computers at the Multnomah County Public Library are configured for children. To use a children's computer you must be a child or an adult, care giver or parent accompanying a child. Children's computers open to the kids page and are configured to help children find what they want and need on the Internet. The kids page generally serves ages 12 and under, while teens go up to age 18. (Cooper 3/25/02 at 98-99)

329. The Norfolk Public Library System in Virginia serves 220,000 people with 11 branches, a bookmobile and a central library. (Reed 3/25/02 at 161)

330. The Norfolk Public Library System covers the city of Norfolk, VA. Norfolk, VA is 50% black and 50% white and over 40% of the families live at or below the poverty line. (Reed 3/25/02 at 162)

331. Approximately 175,000 people have library cards in the Norfolk Public Library System. (Reed 3/25/02 at 162)

332. The Norfolk Public Library System has offered Internet access since 1995-1996. They have approximately 200 terminals available. (Reed 3/25/02 at 163)

333. The South Central Library System, operating out of Madison, Wisconsin, is one of 17 library consortia in the state of Wisconsin. The SCLS is an aggregation of public libraries in 7 counties covering approximately 5,000 square miles. (Hamon 3/25/02 at 196-97, 198, 200)

334. There are 51 independently governed member public libraries in the SCLS. (Hamon 3/25/02 at 196-97, 198, 200)

335. The 51 public member libraries are statutory members of the SCLS; their relationship is spelled out in state law and the SCLS receives money in return for their membership. In addition to the 51 public libraries, there are another 280 academic, school, corporate, hospital, law office and other libraries that have a contractual relationship with the SCLS; these libraries pay SCLS directly for services performed. (Hamon 3/25/02 at 206)

336. The governing body of the SCLS is the Library Board of Trustees. The board consists of 20 members nominated by county executives of the seven counties and ratified by the county boards of supervisors to the seven counties. (Hamon 3/25/02 at 201, 224)

337. The SCLS was established because in the early 1970s about a quarter of Wisconsin's population did not have access to public libraries. The idea of the public library system was to do with groups of libraries what they could not individually undertake. In the public library system, counties pay for rural residents to use existing libraries and the state contributes money to create library assistance. (Hamon 3/25/02 at 197-98)

338. The population of the SCLS as a whole is 700,000. An automated consortium of the collections of 36 out of 51 libraries has issued 350,000 library cards. Hamon believes there are probably another 100,000 library cards in existence issued by libraries not in the consortia. (Hamon 3/25/02 at 199)

339. SCLS is an automated consortium, with centralized computing services called LINK operated out of the Madison Public Library. LINK provides centralized cataloging of materials for the member libraries. This automated system checks books in and out and is the basis for interlibrary loan and resource sharing. The whole structure is also the gateway to the Internet. About 2.6 million items, working out to be over 600,000 titles, are available through LINK. (Hamon 3/25/02 at 206-07)

340. SCLS provides a daily van delivery service to its libraries. Every library receives at least one stop per day. The delivery service supports the interlibrary loan system. There are approximately 1,350,000 interlibrary loan transactions per year within the SCLS. (Hamon 3/25/02 at 207-08)

341. SCLS has over 500 Internet terminals. There are also at least 100 other terminals connected to other Internet providers (not paid for through e-rate funds). (Hamon 3/25/02 at 212-13)

342. Hamon puts the Internet usage in SCLS at "very high;" most libraries have people lined up before opening and after closing to try and use the Internet terminals. (Hamon 3/25/02 at 213)

343. Emmalyn Rood is a sixteen year old from Portland, Oregon. She is currently attending Simons Rock College in Great Barrington, Massachusetts. She is a named plaintiff. (Rood 3/26/02 at 142)

344. Ms. Rood uses the Multnomah County Public Library in Portland, Oregon. (Rood 3/26/02 at 143)

345. Ms. Rood used the Multnomah County Public Library Internet access when she was 13 to research issues relating to her sexual identity. (Rood 3/26/02 at 144-46)

346. Ms. Rood did not use her home or school computer in part because she wished her searching to be private. (Rood 3/26/02 at 144-45)

347. Ms. Rood did not use blocking programs, though the library offered that option, because she had had previous experience with such programs blocking valuable speech including speech relating to gay and lesbian people. (Rood 3/26/02 at 145, 148)

348. Ms. Rood's research at the library was very helpful to her in defining her sexual identity and making her feel good about herself, and she believes other teenagers would have the same experience. (Rood 3/26/02 at 145-51)

349. Mark Brown is a named plaintiff from Philadelphia. He currently attends the University of Pennsylvania. (Brown 3/26/02 at 153-54)

350. Mr. Brown did Internet research at the Philadelphia Free Library from September, 2000 until September 2001, including research on breast cancer and reconstructive surgery for his mother who had breast surgery. (Brown 3/26/02 at 154-55)

351. Mr. Brown's research at the library was very helpful in providing essential information for him and for his mother about her medical condition and her options. (Brown 3/26/02 at 155-56)

352. Dr. Jonathan Bertman is the president and medical director of Afraid to Ask, Inc., publisher of the health education Web site www.AfraidtoAsk.com and a named plaintiff based in Saunderstown, Rhode Island. Dr. Bertman is also currently a family practice physician in rural

Rhode Island, and a clinical assistant professor of family medicine at Brown University. (Bertman 3/26/02 at 309-11)

353. AfraidtoAsk.com's mission is to provide detailed information on sensitive health issues, often of a sexual nature, such as sexually transmitted diseases, male and female genitalia, and birth control. As part of its educational mission, AfraidtoAsk.com often uses graphic images of sexual anatomy to convey information as clearly as possible. (Bertman 3/26/02 at 311, 315-19)

354. AfraidtoAsk.com seeks to serve people of all ages who would prefer to learn about sensitive health issues anonymously, but its primary audience is teens and young adults. Based on survey data collected on the site, half of the people visiting the site are under 24 years old, and a quarter are under 18. (Bertman 3/26/02 at 314)

355. Dr. Bertman's own personal testing, in addition to plaintiffs' expert Benjamin Edelman's testing, revealed AfraidtoAsk.com to be blocked by several leading blocking products as sexually explicit content. (Bertman 3/26/02 at 320-21; Pls. Ex. 122)

356. Dr. Bertman fears that if CIPA is upheld, members of his audience that access the Internet in public libraries will either be embarrassed, unwilling, or in the case of teens in libraries receiving e-rate discounts, unable, to request a research exception from a librarian when AfraidtoAsk.com is blocked. He also fears that some librarians may choose not to grant an exception even if asked, due to the sometimes graphic nature of the site's content. (Bertman 3/26/02 at 314, 322-23)

THE IDENTITY OF THE NON-TESTIFYING ALA PLAINTIFFS

357. 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. (Stip. 1) Some of ALA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access. (Stip. 2)

358. The interests ALA seeks to protect in this litigation are germane to ALA's purposes. (Stip. 3)

359. 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. (Stip. 4)

360. Some of FTRF's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access. (Stip. 5)

361. The interests FTRF seeks to protect in this litigation are germane to FTRF's purposes. (Stip. 6)

362. 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. (Stip. 7)

363. Some of AkLA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access. (Stip. 8)

364. The interests AkLA seeks to protect in this litigation are germane to AkLA's purposes. (Stip. 9)

365. 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. (Stip. 10)

366. 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. (Stip. 11)

367. Some of CLA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access. (Stip. 12)

368. The interests CLA seeks to protect in this litigation are germane to CLA's purposes. (Stip. 13)

369. 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. (Stip. 14)

370. The interests NELA seeks to protect in this litigation are germane to NELA's purposes. (Stip. 15)

371. The New York Library Association (NYLA) is a non-profit organization with several thousand members, including libraries, librarians, library trustees, and friends of libraries. (Stip. 16)

372. 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. (Stip. 17)

373. 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. (Stip. 18)

374. Some of NYLA's public library members receive either e-rate discounts or LSTA funds for the provision of public Internet access. (Stip. 19)

375. The interests NYLA seeks to protect in this litigation are germane to NYLA's purposes. (Stip. 20)

376. 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. (Stip. 21)

377. 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. (Stip. 22)

378. 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. (Stip. 23)

379. The interests ACORN seeks to protect in this litigation are germane to ACORN's purposes. (Stip. 24)

380. 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. (Stip. 25)

381. PCI Friends' members include community leaders, educators, students, parents and grandparents of minors, and other individuals. (Stip. 26)

382. 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. (Stip. 27)

383. The interests PCI Friends seeks to protect in this litigation are germane to PCI Friends' purposes. (Stip. 28)

384. 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. (Stip. 29)

385. 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. (Stip. 30)

386. PAD also manages several statewide Internet listserves comprising hundreds of Pennsylvania residents through which PAD distributes its position papers, news, announcements, and other information. (Stip. 31)

387. 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. (Stip. 32)

388. The interests PAD seeks to protect in this litigation are germane to PAD's purposes. (Stip. 33)

389. Plaintiff Elizabeth Hrenda lives in Susequehanna Township, near Harrisburg, Pennsylvania. (Stip. 34)

390. Ms. Hrenda is a user of the Dauphin County, Pennsylvania Library System. (Stip. 35)

391. Ms. Hrenda and her children are currently patrons of the East Shore and Walnut Street branch libraries. (Stip. 36)

392. 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. (Stip. 37)

393. 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. (Stip. 38)

394. 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. (Stip. 38)

395. 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. (Stip. 39)

396. Plaintiff C. Donald Weinberg lives in Philadelphia, Pennsylvania, and is a regular user of the Central Library Branch of the Free Library of Philadelphia. (Stip. 40)

397. 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. (Stip. 41)

398. Mr. Weinberg's students use the Internet at the library for research related to his course. (Stip. 42)

399. 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. (Stip. 43)

400. 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. (Stip. 44)

THE IDENTITY OF THE NON-TESTIFYING MULTNOMAH PLAINTIFFS

401. 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. (Stip.45)

402. 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. (Stip. 46)

403. 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. (Stip. 47)

404. 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. (Stip. 48)

405. 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. (Stip. 49)

406. 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. (Stip. 50)

407. 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. (Stip. 51)

408. 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. (Stip. 52)

409. 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. (Stip. 53)

410. 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. (Stip. 54)

411. 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. (Stip. 55)

412. The Library does not offer or provide blocking software. (Stip. 56)

413. 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. (Stip. 57)

414. 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. (Stip. 58)

415. 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. (Stip. 59)

416. 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. (Stip. 60)

417. 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. (Stip. 61)

418. 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. (Stip. 62)

419. 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. (Stip. 63)

420. 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. (Stip. 64)

421. The Middleton Public Library has not installed blocking software on any of the ten computers in the library. (Stip. 65)

422. 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. (Stip. 66)

423. 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. (Stip. 67)

424. 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. (Stip. 70)

425. Although Mr. Geringer has Internet access at home and at work, he also uses the Internet at the Central Library. (Stip. 71)

426. 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. (Stip. 72)

427. 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. (Stip. 73)

428. 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. (Stip. 76)

429. 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. (Stip. 77)

430. 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. (Stip. 78)

431. 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. (Stip. 81)

432. 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. (Stip. 82)

433. 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. (Stip. 83)

434. 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. (Stip. 85)

435. Ms. Williams does not have Internet access from home. (Stip. 86)

436. 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. (Stip. 89)

437. In response to assignments from school, she has recently done Internet searches for information on sexually transmitted diseases, breast cancer and prostate cancer. (Stip. 90)

438. Ms. Williams does not own a computer or have access to a computer at home. (Stip. 91)

439. 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. (Stip. 94)

440. 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. (Stip. 95)

441. 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. (Stip. 96)

442. 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. (Stip. 97)

443. On its Web sites targeted to specific cities, OutInAmerica provides chat rooms, news, travel, entertainment and health information. (Stip. 98)

444. 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. (Stip. 99)

445. 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). (Stip. 100)

446. 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. (Stip. 101)

447. In addition to presenting his campaign platform and biography, Mr. Parker's Web site includes his commentary about various political issues, including statements entitled "Elian 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. (Stip. 102)

448. 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. (Stip. 103)

449. Planned Parenthood is a non-profit corporation that is incorporated in New York and has its principal place of business in New York City. (Stip. 104)

450. 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. (Stip. 105)

451. 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. (Stip. 106)

452. 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. (Stip. 107)

453. 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. (Stip. 108)

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

455. 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. (Stip. 110)

456. Mr. Pollock uses his Web site to present his campaign platform, issue statements, and provide information about his opponent's voting record. (Stip. 111)

457. 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. (Stip. 112)

458. 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. (Stip. 113)

459. 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. (Stip. 114)

THE NATURE AND OPERATION OF THE E-RATE PROGRAM

460. 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." (Stip. 115; see also Stips. 116-22, 129-38, 144-58, 161-72 for additional details on the e-rate program)

461. 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. (Stip. 123)

462. As of 2000, nearly 50% of public libraries received e-rate discounts, and approximately 70% of libraries serving the poorest communities received those discounts. (Pls. Ex. 37 at 4)

463. 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. (Stip. 124)

464. 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). (Stip. 128; see also Stips. 125-27 for amount of e-rate discounts in previous years)

465. 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. (Stip. 139)

466. 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. (Stip. 140)

467. School lunch eligibility data measures the percentage of students within 185 percent of the poverty line. (Stip. 141; see also Stips. 142-43)

468. 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. (Stip. 159)

469. 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). (Stip. 160)

470. 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. (Stip. 174)

471. 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. (Stip. 175)

472. 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. (Stip. 176)

473. 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. (Stip. 177)

474. The Commission, to date, has not verified the compliance statement made in any CIPA certification. (Stip. 178)

475. Between 1999 and 2001 the Fort Vancouver Regional Library District received a $6500 yearly discount from e-rate funds for their Internet Service Provider fee. (Morgan 3/25/02 at 24)

476. This year Multnomah County Public Library received approximately $70,000 e-rate money for Internet access. They have applied for approximately $100,000 for the next year. (Cooper 3/25/02 at 89)

477. Last year the Norfolk Public Library System received $90,000 in e-rate rebates for Internet access. Sally Reed believes that e-rate discounts accounted for approximately an 80% reduction of the Norfolk Public Library System telecommunications bill (telephones, Internet connections, T1 lines). (Reed 3/25/02 at 164-166)

478. The South Central Library System (SCLS) receives between $3000 - 5,000 per year as e-rate funds. E-rate funds for telecommunication go through the State. SCLS spends about $100,000 a year on telecommunications; without e-rate it would be about $500,000 a year. (Hamon 3/25/02 at 210-12; see also Findings 357, 360, 363, 367, 369, 374, 378, 382, 387, 401, 403-05, 413, 418, 462)

THE NATURE AND OPERATION OF LSTA FUNDING

479. 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. (Stip. 179)

480. 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. (Stip. 180; see also Stips. 181-84, 189, 191-98 for additional details about the LSTA program)

481. 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. (Stip. 185)

482. As of 2000, over 18% of public libraries receive LSTA or other federal grants, and more than 25% of libraries serving the poorest communities receive such grants. (Pls. Ex. 37 at 4)

483. 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). (Stip. 186)

484. 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. (Stip. 187)

485. 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. (Stip. 188)

486. 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). (Stip. 190)

487. All grant payments made by IMLS under the Grants to States program are made directly to the responsible SLAA. (Stip. 214; see also Stip. 215)

488. 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. (Stip. 216)

489. 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. (Stip. 217)

490. 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. (Stip. 218)

491. Between 1999 and 2001 the Fort Vancouver Regional Library District received over $135,000 in LSTA grants to provide Internet service. (Morgan 3/25/02 at 23-24)

492. The Norfolk Public Library System received an LSTA grant of $200,000 to install computer labs in 8 of their libraries. (Reed 3/25/02 at 166; see also Findings 357, 360, 363, 367, 369, 374, 378, 382, 387, 401, 403, 418)