

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

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

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

**PLAINTIFFS' SUPPLEMENTAL PROPOSED FINDINGS OF FACT
IN RESPONSE TO DEFENDANTS' PROPOSED FINDINGS OF FACT**

1. Libraries have ample authority under numerous federal and state laws to contact law enforcement and initiate criminal prosecution of any Web page that contains child pornography or obscenity. (See, e.g., 18 U.S.C. §1461, §2252; compare Defendants' Proposed Findings of Fact ("DFP") ¶¶41-58)
2. Libraries have ample authority under numerous federal and state laws to contact law enforcement and initiate criminal prosecution for sexual exploitation of a child. (See, e.g., 18 U.S.C. §2251; compare DFP ¶¶59-60, 128)
3. There is no evidence that the Greenville County Library System ever referred any Web sites to law enforcement under state and federal obscenity laws. (See S.C. Code §16-15-385; compare DFP ¶¶121, 128)
4. The incidents at the Greenville County Library System documented in DFP ¶123 and ¶128 involved clearly illegal conduct, yet there is no evidence that the library ever contacted law enforcement to prosecute those responsible. (See, e.g., 18 U.S.C. §2252)
5. Although defendants assert that the Board of the Greenville County Library System "attempts to comply with the [obscenity] statute in providing access to the Internet," the Library is blocking adult patrons from accessing a substantial amount of content on the Web that is clearly not obscene. (Compare DFP ¶121 with Plaintiffs' Joint Proposed Findings of Fact (PFF) ¶¶162-63, 172, 251-57) The State of South Carolina has a law which prohibits the distribution of material that is harmful to minors, but that law has an affirmative defense for public libraries. S.C. Code §16-15-385.
6. Although defendants claim that the Tulsa City-County Library System used blocking programs in part to comply with the Oklahoma harmful-to-minors statute, the library was specifically told by the Oklahoma Attorney General that it did not need to use blocking software to comply with the statute. (Compare Pls.' Ex. 66G with DFP ¶196)
7. Because public libraries are public places, incidents involving inappropriate sexual behavior in libraries existed long before libraries provided access to the Internet. In addition to cooperating with law enforcement, libraries have behavioral policies and procedures for dealing with such incidents. (Chelton 4/2/02 at 190-91; Cooper 3/25/03 at 122; Pls.' Exs. 15, 106; PFF ¶317)
8. There have been very few incidents involving patron complaints about access to content on the Internet at the Fort Vancouver Regional Library. (Compare PFF ¶309 with DFP ¶238)
9. There have been very few incidents involving patron complaints about access to content on the Internet at the Multnomah County Public Library. (Compare PFF ¶309 with DFP ¶242)
10. There have been very few incidents involving patron complaints about access to

content on the Internet at the Norfolk Public Library. (Reed 3/25/02 at 170)

11. When patrons of the Tacoma Public Library access the Internet using the Webfoot browser and Cyber Patrol, and a site is blocked, they are blocked from accessing all pictures on all pages at that site, regardless of whether the pictures meet Cyber Patrol's category definitions or CIPA's legal definitions. In addition, patrons of the Tacoma Public Library are blocked from accessing all URLs that consist entirely of audio, video, or even still pictures. (Biek 3/28/02 at 114-15; Joint Ex. 7 at 52-54; compare PFF ¶193 with DFF ¶¶71-72, 79)

12. Mr. Biek of Tacoma Public Library clearly does apply "his own views with regard to the value or usefulness of a web site" when deciding whether or not to unblock a Web site at the Tacoma Public Library because it contains "graphic content that is portrayed exclusively or solely for pornographic or sensational purposes." (See DFF ¶88)

13. Mr. Biek's "assessments" about the effectiveness of his library's blocking program amount to no more than his conclusion that he is doing a good job. It is not possible for anyone to evaluate the accuracy of Mr. Biek's assessments because the identity of the samples he used is no longer available. In addition, Mr. Biek's results are contradicted by defendants' expert Mr. Finnell and by Mr. Biek's own statistics. (Compare PFF ¶159; DFF ¶112 with DFF ¶¶101-09)

14. Although the Tacoma Public Library has certified compliance with CIPA, it is not blocking all staff computers as clearly required by CIPA and its implementing regulations. (Biek 3/28/02 at 114; Joint Ex. 7 at 50)

15. Although the Fulton County Public Library claims that it has the ability to unblock a Web site system wide or to unblock a Web site for just one computer, it has never done so. (Compare Ewick 4/3/02 at 57 with DFF ¶188)

16. Although some libraries have certified compliance with CIPA as of the start of discounted services in Funding Year 4, the parties stipulated that "[t]he [Federal Communications] Commission, to date, has not verified the statement made in any CIPA certification." (Stip. 179)

17. Although defendants claim that blocking program vendors have certain procedures to avoid IP-address overblocking, there is undisputed evidence in the record establishing that IP overblocking blocks a substantial amount of speech on the Web that does not meet either the blocking programs' category definitions or CIPA's legal definitions. (Compare Joint Ex. 10 at 16-17, 99-100, 109; Pls.' Ex. 146; PFF ¶¶186-88 with DFF ¶¶508-09)

18. Defendants' claims about the customization features of blocking programs are not supported by the record. Defendants' assertion that a library in Pasadena Texas applies different blocking categories to computers for minors is pure hearsay. (Compare PFF ¶¶292, 298-300)

with ¶¶ DFF 535-37)

19. Of the 99 Web sites that Mr. Lemmons tested in his extremely limited research of overblocking, 10 Web sites were wrongly blocked by at least one of the following products he tested: SmartFilter; Cyber Patrol; WebSense; and N2H2. (Compare Lemmons 3/28/02 at 211-15 with DFF 290)

20. In addition, Mr. Lemmons found that the Foolproof Safe Server product wrongly blocked 9 out of the 99 Web sites he tested for overblocking. (Compare Lemmons 3/28/02 at 206-07 with DFF 290)

21. Mr. Lemmons conceded that none of the 99 Web sites he tested for overblocking could be confused with pornography if a human actually reviewed the sites. (Lemmons 3/28/02 at 210)

22. Mr. Lemmons conceded that the adult Web sites he used in his extremely limited research of underblocking were not representative in any way of the total population of adult Web sites on the Internet. (Compare Lemmons 3/28/02; Pls.' Ex. 125 at 9-12 with DFF ¶¶ 297-98)

23. Mr. Finnell agreed that, due to the nature of his methodology in measuring underblocking, a library that had no blocking program at all would have virtually identical underblocking statistics. Mr. Finnell's underblocking statistics are thus meaningless. (Compare Finnell 4/1/02 at 174-75; DFF ¶ 262; with DFF ¶¶ 300-03)

24. Mr. Finnell hired staff from a temporary services agency to make judgments about whether Web pages were consistent with the blocking programs' category definitions. He did not know their names or qualifications and provided no evidence of their training for this task. (Compare Finnell 4/1/02 at 154 with DFF ¶¶ 285-88)

25. All of the assistants used in Dr. Janes' study were graduate students, and he knew their identities and expertise. (Janes 3/26/02 at 105-07; PFF ¶ 215)

26. Defendants did not identify a single Web page reviewed by Dr. Janes, Dr. Ryan, or Ms. Lipow that should have been blocked under either the blocking programs' category definitions or CIPA's legal definitions. (See DFF ¶¶ 319, 331-67)

27. Ms. Lipow found that libraries had chosen to link directly to some of the Web pages she reviewed that had been blocked. (Lipow 4/2/02 at 151-52)

28. Of Mr. Edelman's 6,777 Web pages, defendants identified only a few Web pages that they assert should have been blocked under the blocking programs' category definitions. Defendants did not identify a single Web page of Mr. Edelman's 6,777 Web pages that should

have been blocked under CIPA's legal definitions. (See DFF ¶¶327-29)

29. Contrary to defendants' implication, Mr. Edelman specifically denied that Web pages not documented in his report, but which he tested through his database of 500,000 URLs, were either not blocked at all or correctly blocked. (Compare Edelman 4/2/02 at 16-17, 100-01, 109 with DFF ¶322)

30. 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. (Compare PFF ¶¶75-76 with DFF ¶¶379-81)

31. Defendants' claim that the mandatory use of blocking programs is consistent with the principles of public librarianship is directly contradicted by the record and the testimony of defendants' witnesses. (Compare PFF ¶¶92-107 with DFF 429-33)

Respectfully Submitted,
COUNSEL FOR ALL ALA PLAINTIFFS:

Paul M. Smith
Theresa A. Chmara
Daniel Mach
Katherine A. Fallow
JENNER & BLOCK, LLC
601 13th Street, N.W.
Washington, D.C. 20005
Phone: (202) 639-6000
Fax: (202) 639-6066

Robert A. Nicholas
Wayne C. Stansfield
REED SMITH, LLP
2500 One Liberty Place
Philadelphia, PA 19103-7301
Phone: (215) 851-8100
Fax: (215) 851-1420

COUNSEL FOR PLAINTIFFS
ACORN, FPCIL, PAD,
ELIZABETH HRENDA, and
C. DONALD WEINBERG
Elliot M. Minberg
Lawrence S. Ottinger
PEOPLE FOR THE AMERICAN WAY
FOUNDATION
2000 M Street, N.W., Suite 400
Washington, D.C. 20036
Phone: (202) 467-4999
Fax: (202) 293-2672

April 18, 2002

COUNSEL FOR ALL MULTNOMAH
PLAINTIFFS:

Ann Beeson
Christopher A. Hansen
Kevin Bankston
American Civil Liberties Union Foundation
125 Broad Street
New York, New York 10004
(212) 549-2500

Stefan Presser
Attorney ID No. 43067
ACLU of Pennsylvania
125 South Ninth Street, Suite 701
Philadelphia, PA 19107
(212) 592-1513 ext. 216

Charles S. Sims
Stefanie S. Kraus
Andrew L. Lee
Frank Scibilia
Proskauer Rose LLP
1585 Broadway
New York, New York 10036-8299
(212) 969-3000

David L. Sobel
Electronic Privacy Information Center
1718 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20009
(202) 483-1140

Lee Tien
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333

FOR PLAINTIFF MULTNOMAH
COUNTY PUBLIC LIBRARY:
Thomas Sponsler, County Attorney
Multnomah County
501 NE Hawthorne Blvd., Suite 500
Portland, Oregon 97214
(503) 988-3138