

## FOREWORD

Every new medium for human expression inspires both excitement and anxiety. No sooner was the Internet upon us in the 1990s than anxiety arose over the ease of accessing pornography and other controversial content. In response, entrepreneurs soon developed filtering products. By the end of the decade, a new industry had emerged to create and market Internet filters.

The filters were highly imprecise. The problem was intrinsic to the technology. The sheer size of the Internet meant that identifying potentially offensive content had to be done mechanically, by matching “key” words and phrases; hence, the blocking of websites for “Middle sex County,” “Beaver College,” and “*breast* cancer”—just three of the better-known among thousands of early examples of overly broad, and indeed irrational, filtering.

Some people argued that inaccuracy was an acceptable cost of keeping the Internet safe, especially for kids. Others—including many librarians, educators, and civil libertarians—argued that the cost was too high. To help inform this policy debate, the Free Expression Policy Project

(FEPP) published *Internet Filters: A Public Policy Report* in the fall of 2001, summarizing the results of more than 70 empirical studies on the performance of filters. These studies ranged from anecdotal accounts of blocked sites to extensive research applying social science methods.

Nearly every study revealed substantial overblocking. That is, even taking into account that filter manufacturers use broad and vague blocking categories—for example, “violence,” “tasteless/ gross,” or “lifestyle”—their products arbitrarily blocked many web pages that had no relation to the disapproved content categories.

Despite such irrational results, the filtering business continued to grow. Schools and offices installed filters on their computers, and public libraries came under pressure to do so. In December 2000, President Bill Clinton signed the “Children’s Internet Protection Act” (or “CIPA”), which despite its child-focused title, mandated filters on *all* computers—whether used by minors or adults—in schools and libraries that receive federal aid for online connections.

Although the Supreme Court upheld CIPA in 2003, the debate over Internet filters is far from over. For one thing, the Court only turned back a constitutional challenge to the law as written. It left open the possibility of lawsuits challenging CIPA “as applied” by particular schools or libraries.

For another thing, schools and libraries, at least in theory, have the option of offering unfiltered Internet access by refusing federal aid. They need information about how filters operate in order to make this decision.

Finally, parents, employers, universities, and others not covered by CIPA also need solid information in order to make wise choices about censorship and free expression online—and especially about the perils of filtering technology.

Because the issue remains important, FEPP published a fully revised and updated edition of *Internet Filters* in 2006. It was during our research for this revised report that we discovered Dr. Lynn Sutton’s study of the effects of filtering in one typical American school. Dr. Sutton’s report was particularly useful because it was qualitative, not quantitative. That is,

it did not reduce the adverse effects of filters to percentages and statistics, as many other tests and studies attempted to do—in the process, often understating if not ignoring the actual content and value of the tens of thousands of websites that filters routinely block, even at their narrowest settings. Dr. Sutton’s work gives immediacy to the filtering story, and shows through real-world experiences how damaging filters can be for the educational process. It is cause for celebration that her work is now appearing in book form.

Internet filtering today suffers from two major flaws. Stated bluntly, they are: bias and absurdity. Bias arises because like all of us, filter manufacturers have their own ideas about what kind of expression is valuable, acceptable, or inoffensive, and what kind of expression, by contrast, is offensive, unacceptable, or “harmful to minors.” In a free society, everybody is entitled to have a personal view on these matters, but government cannot enforce one view by silencing all others. When censorship decisions are made by private companies, however, the First Amendment does not ordinarily apply. Filters thus have the potential to suppress speech much more broadly than any law or government policy could do.

Private biases are evident both in the blocking categories that filtering companies establish and the specific blocking decisions that company employees make. Some filters block virtually all information about gay and lesbian issues, regardless of whether it has sexual content. Some have broad blocking categories for “alternative lifestyles,” “cults,” or “sex education”; what qualifies as an acceptable mainstream religion, and what merits “cult” status, of course, involves highly subjective judgments. Not surprisingly, one of the most frequently and deliberately blocked categories has been criticism of filtering software.

The absurdity of filtering results is an even more insidious problem. Reducing human expression to simplistic categories and sets of key words and phrases is bound to lead to large volumes of “false positives”—blocks that result from the inability of even the most sophisticated “artificial

intelligence” algorithms to consider the context, meaning, and value of speech. The examples are legion, from the early blocking by CYBERSitter of the word “homosexual” in the sentence “The Catholic Church opposes homosexual marriage”—thus leaving the viewer to read that “The Catholic Church opposes marriage”—to the blocking of Congressman *Dick Arme*y’s website, the University of Kansas’s Archie R. *Dykes* Medical Library, and the phrase “at least 21” from a human rights site reporting that at least 21 people were killed or wounded in an incident in Indonesia (“at least 21” being a phrase that is often blocked because it is likely to appear on pornography sites).<sup>1</sup>

Some of the most dramatic evidence of absurd overblocking came to light in the course of the lawsuit brought by the American Library Association and other groups to challenge CIPA. A three-judge federal court that heard the evidence explained that initially, filters trawl the web much as search engines do, “harvesting” for possibly relevant sites by looking for key words and phrases. There follows a process of “winnowing,” which also relies largely on mechanical techniques. Although most filter companies also use some human review, their relatively small staffs (between eight and a few dozen people) can give at most a cursory review to a fraction of the sites that are harvested each day.

The three-judge court found that as a result of their operation, filters mistakenly block tens of thousands of valuable web pages. Focusing on the filters used most often in libraries, the judges gave dozens of examples, among them a Knights of Columbus site, misidentified by Cyber Patrol as “adult / sexually explicit”; a site on fly fishing, misidentified by Bess as “pornography”; a guide to allergies and a site opposing the death penalty, both blocked by Bess as “pornography”; a site for aspiring dentists, blocked by Cyber Patrol as “adult/sexually explicit”; and a site that sells religious wall hangings, blocked by WebSense as “sex.”

<sup>1</sup> Citations for all facts and quotations in this Foreword can be found in *Internet Filters: A Public Policy Report*, [www.fepproject.org/policyreports/filters2.pdf](http://www.fepproject.org/policyreports/filters2.pdf).

The judges noted also that filters frequently block all pages on a site, no matter how innocent, based on a “root url.” The root urls for large sites like Yahoo or Geocities contain not only reams of educational material, but thousands of personal web pages. Likewise, according to the court, one item of disapproved content (for example, a sexuality column on Salon.com) often results in filtering the entire site.

In large part because of this massive overblocking—because of the sheer absurdity of the results produced by filters—the three-judge court struck down CIPA’s library provisions. (No suit was brought to challenge the law as applied to schools.) The judges found that there are less burdensome ways for libraries to address concerns about illegal obscenity on the Internet, and about minors’ access to material that most adults consider inappropriate for them, including “acceptable use” policies and supervision by library staff.

In reversing this lower court decision and upholding the constitutionality of CIPA in 2003, Chief Justice William Rehnquist (writing for a “plurality” of four of the nine Supreme Court justices) asserted that library patrons have no right to unfiltered Internet access. That is, according to Rehnquist, filtering is no different in principle from librarians’ decisions not to select certain books for library shelves. Moreover, Rehnquist said, because the government is providing financial aid for Internet access, it can limit the scope of the information that is made available. He added that if erroneous blocking of “completely innocuous” sites creates a First Amendment problem, “any such concerns are dispelled” by a provision in CIPA that allows libraries to disable their filters upon request, for “bona fide research or other lawful purposes.”

Supreme Court Justices Anthony Kennedy and Stephen Breyer wrote separate opinions concurring in the judgment upholding CIPA. Both relied on the “disabling” provisions of the law as a way for libraries to avoid restricting adults’ access to the Internet. Kennedy emphasized that if librarians fail to unblock on request, or adults are otherwise

burdened in their searches, then a lawsuit challenging CIPA “as applied” to that situation might be appropriate.

Three justices—John Paul Stevens, David Souter, and Ruth Bader Ginsburg—dissented from the Supreme Court decision. Their dissents drew attention to the three-judge court’s description of the perils of filtering, and to the delays and other burdens that make discretionary disabling a poor substitute for uncensored Internet access. Souter objected to Rehnquist’s analogy between filters and library book selection, arguing that filtering is actually more akin to “buying an encyclopedia and then cutting out pages.” Stevens noted that censorship is not necessarily constitutional just because it is a condition of government funding—especially when funded programs are supposed to facilitate free expression, as in universities and libraries.

After the Supreme Court upheld CIPA, public libraries confronted a stark choice—forgo federal aid for Internet connections, including e-rate discounts, or invest resources in a filtering system that censors large quantities of valuable material. Public schools, not having challenged CIPA, confronted this dilemma from the moment the law was enacted. But because of local political pressures, most school districts had already bought into filtering. As one school official frankly noted: “It would be politically disastrous for us not to filter. All the good network infrastructure we’ve installed would come down with the first instance of an elementary school student accessing some of the absolutely raunchy sites out there.”

This administrator’s observation points up the high political stakes in the filtering debate. On the one hand, filters are highly effective, if often irrational, censorship tools, blatantly aimed at suppressing information and ideas. On the other hand, political leaders and the general public continue to express fears about minors’ access to pornography or other presumably inappropriate speech online.

There is no simple answer to this political dilemma, which has produced a financial windfall for filtering company executives. Speech can

be powerful, and the human impulse to censor words, images, and ideas that are thought to be wrong and dangerous is understandable. There are, of course, the classic free-society responses—education of our youth to be critical thinkers; “more speech” in the marketplace of ideas where good ideas supposedly drive out bad ones. But these solutions lack the emotional satisfactions and broad “quick-fix” appeal of censorship.

Among the more “realpolitik” arguments, some critics of filters emphasize that they create a false sense of security because smart youngsters can circumvent them, and because they “underblock” – that is, they fail to identify and suppress many “bad” sites. But these practical arguments cede too much ideological territory to the advocates of censorship, and lead the public to conclude that if only we can improve filtering technology, the solution to our worries will be at hand.

This is where reports “from the trenches” such as Lynn Sutton’s come in. By describing the experiences of ordinary students and teachers, Sutton demonstrates the negative impact of filters on research, discovery, and curiosity—the essential elements of education. Stories like those that Sutton recounts have the potential to persuade local communities that simple training in Internet safety serves all of us better than a filtered Internet.

Meanwhile, as FEPP’s report concluded, there are steps that schools and libraries subject to CIPA, as well as companies and parents that want to filter, can take to reduce both the bias and absurdity of filtering products.

First, they should understand the differences among products, and choose filters that easily permit both overall disabling and unblocking of individual sites.

Second, they should only activate the minimum necessary blocking categories, rather than accepting the filter’s default setting. For schools and libraries, this means only activating the “pornography” or similar filtering category, since CIPA only requires blocking of obscenity, child pornography, and “harmful to minors” material. Each of these legal categories

requires that the targeted material contain “prurient” or “lascivious” sexual content. Thus, neither sex education, nor political discussion of sexual issues, nor sexually explicit health sites, need to be blocked to comply with CIPA.

Third, schools and libraries subject to CIPA should promptly disable filters on request from adults or, if permitted by the portion of the law that applies to them, from minors as well.

Finally, all of us need to educate ourselves and each other about non-censorship approaches to online literacy and safety. Despite the superficial appeal of filters, they are not a solution to concerns about pornography or other questionable content online. Media literacy, sex education, and free speech are the best ways to protect the next generation.

Marjorie Heins  
Fellow, Brennan Center for Justice  
Founder & Coordinator, Free Expression Policy Project