

**December 2012**

*Background:*

*In April 2012 the U.S. District Court in Spokane, Washington ruled in **Bradburn v. North Central Regional Library District** that a library's policy of selectively unblocking particular websites or web pages for adult patrons upon request was sufficient to satisfy the law. The ruling came in a case filed by the ACLU of Washington on behalf of four plaintiffs who were denied access to lawful materials on the Internet because of the North Central Regional Library District's overly broad filtering policy.*

*The policy hampered adults in researching school assignments, locating businesses and organizations, and doing personal reading on general interest topics. The individual plaintiffs included a college student seeking to research an academic assignment on tobacco use, a professional photographer seeking information on art galleries and health issues, and an area resident seeking access to a blog he maintained on MySpace. The other plaintiff was the nonprofit Second Amendment Foundation, whose magazine Women and Guns was blocked by the library's filter.*

*The ACLU chose not to appeal the ruling in part because the case had been pending in the courts for over six years and the library had in the interim revised the filtering policies at issue in the case. Additionally, the decision was not published and had limited legal impact. However, at least one library in Washington has now chosen to implement similar policies, citing the Bradburn case as a precedent. The following FAQ explains why this is a bad idea.*

**Q: Can libraries rely on the *Bradburn* decision to install filters or require 72-hour waiting periods for filters to be unblocked?**

**A:** Libraries that implement filtering policies similar to the one in North Central are restricting their patrons' First Amendment rights, and do so at their peril. The *Bradburn* decision was by *one* district judge reviewing *one* particular set of facts in *one* library system, and was not published by the court, which further reduces its impact. The filtering was upheld in part because most of the twenty-eight branch libraries that comprise the North Central Library District are relatively small in size and do not have partitions separating the children's portion of the library from the remainder of the library.

For more on this issue, libraries should consult a recent article by Theresa Chmara, an experienced First Amendment attorney who is general counsel for the Freedom to Read Foundation. In it, she carefully explains why libraries should obtain independent legal advice before implementing filtering policies, rather than relying solely on an unpublished court decision for guidance.<sup>1</sup>

**Q: Does the ACLU's decision not to appeal the *Bradburn* ruling mean that libraries won't have to worry about being sued if they implement a policy similar to North Central's?**

A: The ACLU stated clearly in its press release<sup>2</sup> about the decision that "Public libraries in Washington should not regard the Court's ruling as a license to filter with impunity. Should another district seek to deny library patrons access to broader categories of speech, the ACLU of Washington will take appropriate action to protect their constitutional rights."

**Q. A group called "Stop Porn in Spokane Public Libraries" has posted a legal information sheet about filtering laws, citing several Supreme Court cases as precedents. Can I cite this information to defend my filtering policy?**

A: The document you refer to was assembled by a non-lawyer, an anti-porn crusader named Dawn Hawkins. It should not be relied on for legal advice. It contains numerous misstatements of fact and law. For instance, the author repeatedly conflates pornography, which is legal, with obscenity, which is not. The author also states that the Supreme Court's 2003 ruling on the Children's Internet Protection Act (CIPA) mandates filtering of "offensive" content. To the contrary, CIPA specifically requires libraries to block only visual depictions of three kinds of content that fall outside the protection of the First Amendment: "obscenity," "child pornography," and for minors, content defined as "harmful to minors."

For information on CIPA and filtering that has been reviewed by attorneys involved in these cases, see the ALA's "Libraries and the Internet Toolkit," online at <http://www.ala.org/advocacy/intfreedom/iftoolkits/litoolkit/librariesinternet>

**Q: Isn't it true that a library in Yakima, WA installed filters after a man was caught masturbating to porn on the library?**

A: It is true that the Yakima library board recently voted to install filters, reportedly in response to such an incident. However, according to recent news reports, library officials have said that the man was not actually viewing porn at the time of the incident, so filters would not have prevented his actions.<sup>3</sup> Library director Kim Hixson acknowledged in an interview with the *Yakima Herald* that filters can be overbroad and block legally protected sites such as those with content about the sex trade and human trafficking.<sup>4</sup> The filters "will be reviewed for efficacy in coming months," according to Hixson, and in the meantime, patrons are encouraged to request unblocking of sites if the filter prevents access.

**Q: What do I say in response to patrons who have heard from the Spokane anti-porn group and others that “countless children are getting their first experience of porn in the public library?” and that without filters, children will develop “porn addictions” and become victims of sexual assault?**

A: Notably, the author of these statements, Dawn Hawkins, does not cite a single source for these assertions. Hawkins is Executive Director of Morality in Media and Porn Harms. The Porn Harms website’s section citing “peer reviewed research” does not include a single study substantiating her claims. In contrast, Kaiser Family Foundation studies published in 2001 and 2002 found that only 9 percent of young people reported stumbling across pornography online “very often;” 14 percent reported “somewhat often;” 47 percent reported “not too often;” and 30 percent reported never having done so, while inadvertent exposure to pornography during Internet use occurred only 1% of the time.<sup>5</sup>

A reporter for Forbes Magazine, Seth Lubove, detailed his effort to verify the assertion that "most children now typically get their first exposure to porn at age 11." <sup>6</sup> He traced the statement to a self-published anti-porn advocate who could not remember his source but insisted that it was a common statistic. Researchers with the Crimes Against Children Research Center at the University of New Hampshire and California's Internet Solutions for Kids disputed his claim, citing current research demonstrating that 14 is the average age at which adolescents first seek out sexual materials on the Internet and that most young children who are exposed to porn see it in the home when they discover magazines kept by their parents.

According to a September 2012 news article, during the past two years Yakima library officials have recorded only six incidents of inappropriate behavior by people using public computers. During that same time, patrons have visited library branches 1,600,000 times and used its computers approximately 400,000 times, according to the library’s director, Kim Hixson. "We’d like to say we’ve had zero" incidents, she told the *Yakima Herald*.

**Q: How do I respond to the accusation that librarians are always defending porn in libraries?**

A: The claim that ALA and its members defend or promote porn relies on anti-porn advocates' habit of falsely equating librarians' advocacy on behalf of children's and young adults' First Amendment rights with "promoting porn to kids." Nothing is further from the truth. ALA policies have always firmly defended a parent's right to guide their child's use of the Internet and other library resources, while asserting that those who object to particular library materials should not be given the power to restrict other library users’ rights to access those materials.

We've found most parents agree that it is *their* role, not a librarian's, to determine what is appropriate for their children. Librarians have a special role in our democracy to safeguard *everyone's* access to information protected by the First Amendment.

In our experience, libraries have had great success with practical measures – such as special screens -- that protect the privacy of the viewer as well as of the adult or minor patron who may wish to avoid what is being viewed by others.

ALA stands by its longstanding mission of providing leadership for the development, promotion, and improvement of library and information services and the profession of librarianship in order to enhance learning and ensure access to information for all.

Sadly, the information about ALA provided by Dawn Hawkins via her [Safe Schools, Safe Libraries](#) handouts contains factual inaccuracies and misrepresentations. We strongly encourage anyone with questions about ALA's policies to consult ALA directly and to read those policies in full on the ALA website.

## Endnotes

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<sup>1</sup> Theresa Chmara, "Why Recent Court Decisions Don't Change the Rules on Filtering," *American Libraries*, July 24, 2012, online at <http://americanlibrariesmagazine.org/news/07242012/why-recent-court-decisions-don-t-change-rules-filtering> (last accessed on December 3, 2012.)

<sup>2</sup> "ACLU-WA Will Continue to Be Vigilant for Internet Censorship in Libraries," June 6, 2012, online at <http://www.aclu-wa.org/news/aclu-wa-will-continue-be-vigilant-internet-censorship-libraries> (last accessed on December 3, 2012.)

<sup>3</sup> Dan Catchpole, "Library to block porn websites," *Yakima Herald-Republic*, September 26, 2012; accessed online at <http://www.yakima-herald.com/stories/2012/09/26/library-to-block-porn-websites> (last accessed on October 30, 2012; paid archive)

<sup>4</sup> Dan Catchpole, "Library to block porn websites," *Yakima Herald-Republic*, September 26, 2012; accessed online at <http://www.yakima-herald.com/stories/2012/09/26/library-to-block-porn-websites> (last accessed on October 30, 2012; paid archive)

<sup>5</sup> "Generation Rx.com: How Young People Use the Internet for Health Information," accessed online at <http://www.kff.org/entmedia/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=13719>; and "See No Evil: How Internet Filters Affect the Search for Online Health Information," online at <http://www.kff.org/entmedia/3294-index.cfm>

<sup>6</sup> Seth Lubove, "Sex, Lies and Statistics," *Forbes*, November 23, 2005. Online at [http://www.forbes.com/2005/11/22/internet-pornography-children-cz\\_sl\\_1123internet\\_print.html](http://www.forbes.com/2005/11/22/internet-pornography-children-cz_sl_1123internet_print.html) (last accessed on December 3, 2012.)