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*See Also: the University of British  
Columbia iSchool Student Journal*

Vol. 2, No. 1 (Spring 2016)

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**A Legal, Ethical, & Technological Dilemma:  
Internet Filtering for Explicit Content in Public Libraries**

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**Keywords:** Public libraries, censorship, filtering, collection development

**Abstract**

This literature review, originally written in February 2015 to satisfy course requirements for LIBR 505: Research Methods in Information Organizations, explores various aspects of the debate surrounding Internet filtering for explicit content on public library computers in North America, with a focus on libraries and legislation in the United States. The literature examined extends from the early 2000s to the present.

**Statement of Purpose**

Over the last couple of decades, public libraries have become significant providers of free internet access (Pautz, 2013). This has expanded what resources and services they can offer their communities. For individuals who cannot afford home internet access public library computers may be their sole means of getting online, whether it be to apply for jobs, communicate with friends and family, do personal or school-related research, or simply surf the Web.

Some also use public library computers for entertainment. Much of this use consists of activities that would generally be considered innocuous (aside from associated excessive bandwidth usage), such as playing online games or viewing YouTube videos. However some patrons of public libraries use, or try to use, the computers to view pornography or other explicit images, which creates a potentially uncomfortable and unsafe environment for staff and other users, especially minors.

This raises the question of whether accessing such material should be prohibited on library computers altogether, and, if so, how to go about blocking it while ensuring that access to valid material remains unimpaired and the rights of patrons protected. In the West, the debate on this issue is heavily affected by laws guaranteeing free speech and freedom of information. This is most true of the debate in the United States, where proponents of unfiltered access can cite the First Amendment as a powerful legal foundation in their favor.

In addition to the legal aspect, there is also a technological side to this problem. Filtering technology in its present state has not progressed to the point where it is possible to block any and all explicit material of a certain kind without also blocking legitimate material that coincidentally shares similar search language, such as a website on safe sex that includes images.

This issue has relevance and importance both because of the traditional role of the public library as an unbiased source of free information and because of the ongoing evolution of the public library as an institution and communal resource. Librarians have always had some power over what the public reads or accesses because they select materials and manage collections, but the profession also has a strong cultural inclination against censorship. At a more practical level, one of the foremost reasons for the existence of the public library in our society has been to empower ordinary people, including youths, to educate and inform themselves in a safe environment where thoughtfulness and studiousness are nurtured and encouraged. Allowing certain users to view pornography in the same spaces as those occupied by, for example, a middle school student writing a report or a young mother researching postpartum depression, creates obvious problems. It damages the library's cultural image and is likely to discourage certain groups, especially parents with small children, from using the library.

The existing literature on this subject is rich in analyses from a legal point of view, especially regarding legislation in the United States. Much of this literature first appeared in law reviews. Less work, however, seems to have been done on considering the issue from the points of view of user groups themselves, and it is this angle that is of greatest interest to us. Specifically, we are interested in knowing how user groups have reacted - negatively, positively, or indifferently - to filtering (or the lack thereof) of internet access on public library computers and how they have reacted, or may react, to solutions that attempt to find a middle ground between unfettered access to explicit imagery and heavy-handed restrictive policies.

### **Defining explicit content**

One of the largest obstacles to a comprehensive analysis of the subject is the difficulty of defining the term "pornography." Robert Bravard writes, "Pornography is impossible to define in any useful fashion. There is no universal legal definition. All efforts at achieving a definition move in a circle from pornography to obscenity to prurient to licentious to indecent to lascivious to lewd and back again" (1989). The meaning of the term is especially unclear when considering similar, but better respected, genres like "erotica." The lack of a clear, legally useful, definition that is consistent over time and across various communities has been a focal point of the legal debate

within the United States and has been a hindrance to the crafting of effective policies or laws there and elsewhere. Literature within both the information science and legal disciplines routinely cite the “Miller test,” a product of the 1973 U.S. Supreme Court case *Miller v. California*, as a starting point (Skaggs, 2003, p. 824; Wardak, 2003, p. 671; Cohen & Minow, 2006, p. 76) but often critique it as a poor basis for policy-making. This test determines a work is “obscene” if “the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to a prurient interest... [whether it] depicts or describes, in a patently offensive way, sexual conduct... [and whether] the work, taken as a whole, lacks serious literary, artistic, political, or scientific value” (Miller, as cited in Wardak, 2003). Applying this test to online materials is difficult since the internet transcends any single community. If libraries were expected to use national standards, they would either be forced to use those of the most “puritanical community,” or they would end up applying them inconsistently, defeating the point (Skaggs, 2003, p. 826-7). The test has also been criticized as internally inconsistent, since it requires a work simultaneously appeal to and offend the same person. Moreover, the test defines “obscenity” rather than “pornography” – a work may be considered pornographic without being obscene (Cohen & Minow, 2006, p. 77) – and this approach is too specific to the laws of the United States to be applied universally.

Another approach in the information science discipline has been the development of ways to properly classify and catalogue pornographic materials. The methodology of this research has been mostly theoretical discussion, with some analysis of existing classification schemes. Dilevko and Gottlieb approach the subject by considering the needs of academic libraries, where access to such materials is justified by the study of them within universities as artifacts of popular culture (2004, p. 36). The purpose of Dilevko and Gottlieb’s research is to help users find specific types of pornography; liberated from legal and moral concerns, determining conclusively whether a work should or should not be considered pornographic is less urgent. As such, they employ a simpler definition of “pornography” borrowed from Bill Katz: “any material that seeks primarily, even exclusively, to bring about sexual stimulation” (p. 38). This definition derives from the intentions of authors and individual users, not the whole of society, allowing a greater degree of flexibility and specificity than the Miller Test. They conducted a review of existing classification schemes for pornography in libraries and found they covered the study of pornography as a topic but not pornographic materials themselves (p. 43). Dilevko and Gottlieb propose the use of subject headings modeled after specific areas of existing scholarly research supplemented with subheadings derived from categories used by adult websites (p. 46), producing a classification system that combines how pornography is studied with how it is produced and consumed. They further suggest records for adult websites be added to the Online Computer Library Center’s Cooperative Online Resource Catalog (p. 40), allowing libraries to share the burden of developing a comprehensive online collection. This research shows promise since the deep level of analysis necessary to catalogue websites would likely result in fair usage of the label “pornographic,” but it is too inchoate and work-intensive for use in public libraries to resolve issues of access. The bottom-up approach of the classification system may be helpful to public librarians, though: rather than trying to define what pornography is according to abstract principles, they can categorize the variety of forms of pornographic material they come across, and decide which among these should be accessible or not.

A third approach common in the literature is to essentially sidestep the issue of definitions. For example, Pors conducted questionnaire surveys in Denmark asking librarians about their policies on internet filtering and misuse, but left it to them to decide what constituted “misuse” (2001, p. 310), which could have meant accessing racist, violent, or pro-Nazi materials as well as pornography. Spacey, Cooke, Muir, and Creaser define “misuse” as “viewing harmful content, such as pornography” (2013, p. 481), assuming the meanings of “harmful” and “pornography” are either obvious or determined ad hoc. Houghton-Jan writes that internet filters are inaccurate at blocking sexually explicit content but does not directly address how accuracy should be determined (2010). This may be just as well since, like the notion of “relevance” in information retrieval, what is most important are the perceptions of the user, who ultimately decides on an individual basis whether a given material is pornographic.

It is assumed in much of the research that pornography is graphic, visual material rather than text; or that textual material is less extreme, offensive, or cause for concern. For example, Ann Curry’s 2000 study of Burnaby Public Library (British Columbia, Canada) internet logs classifies websites with only textual material as “soft core,” in contrast to “hard core”. Certainly, viewing textual pornographic material is less bothersome to other users and easier to ignore – one can discern the contents of an image from a peripheral glance, whereas reading another’s screen is more purposeful. This implies the debate over internet pornography is more often concerned with preserving the library as a welcoming environment, rather than preserving the morals of individual users.

### **Use of internet content filters**

Internet filtering programs are powerful tools for controlling user access to online resources. They generally employ either whitelists (allowing users access to only pre-specified websites), blacklists (allowing users access to all but pre-specified websites), or keyword and content filters (which can make complex assessments of websites but cannot determine the actual content and intent of a page, an image, or a video) (Houghton-Jan, 2010, p. 26). The literature reviewed mostly covered policies in Western countries with strong legal protections of free speech like the United States, Canada, the United Kingdom, and Denmark. Trushina’s international analysis of librarian ethics codes includes Eastern Europe and Asia as well. That study shows that the ideals of equality of access and freedom of information have an essentially universal appeal; on the other hand, librarians in countries such as Russia have more freedom than their Western counterparts to block access to pornography and other online materials by their own discretion (2004).

One thread in the literature emphasizes the inaccuracy inherent in filtering technology. Although authors note the power and complexity of filtering programs, there is a general consensus among the articles reviewed that most filters over-block legitimate content and under-block illegitimate content (Cohen & Minow, 2006, p. 87; Houghton-Jan, 2010, p. 27; Pautz, 2013, p. 313; Spacey et al., 2014, p. 485), with the possible exception of blacklist filters, wherein librarians must

specifically choose to block individual websites (Laughlin, 2003, p. 274). Studies from 2001 to 2008 concluded filters were accurate only 78.347 to 83.316 percent of the time (Houghton-Jan, 2010, p. 27) and blocked legitimate pages on topics such as sexual orientation, sexual health, women's organizations, religion, and the academic study of pornography (Laughlin, 2003, p. 262; Houghton-Jan, 2010, p. 29; Pautz, 2013, p. 313). Given the rapidity of software development, filters in 2015 may be subtler and more discriminating than those in 2008. Regarding implementing filters in libraries, Lisa Hone, deputy division chief of the (U.S.) Federal Communications Commission's Telecommunications Access Policy Division, stated in 2014, "The technology has advanced so tremendously that it's pretty easy to have a different standard for adults and children, which I don't think was really the case when CIPA [Children's Internet Protection Act] was first enacted." (Chambers, Halley, Hone, & Eberle). Should filtering technology become increasingly accurate, arguments against filtering may undermine themselves by relying too much on the technology's inefficacy.

Another thread discusses alternative methods to regulate internet use. These include: clear acceptable use policies and honor systems, "tap-the-shoulder" monitoring by librarians, requiring user registration (Pors, 2001; Pautz, 2013; Spacey et al., 2014), "zoning" computers into various levels of access (e.g. children versus adults), privacy-enhancing screens, portals to guide users toward specific, high-quality resources (Pautz, 2013), information literacy classes (Spacey et al., 2014), and physical arrangements of computers that either enhance or disrupt private viewing (Pors, 2001). The implication is that these methods should allow libraries to use filters more sparingly or forego them entirely. However, there is a gap in the scholarship regarding issues of security: filters are important tools for blocking access to websites, emails, and downloadable files that contain viruses, malware, or trojans that could infect library computers and render them unusable. Focusing only on content ignores other, more practical, uses of filter technology.

The literature presents reasons for and against filtering based on hypothetical concerns, abstract principles, or legal issues. There is little substantial direct evidence gathered on users' needs, perspectives, or behaviors – with the exception of Ann Curry's study in 2000, which showed users seldom (and then only briefly) viewed pornography on library computers. That study, however, may be completely outdated given the rapid evolution of the internet: websites were often viewed briefly because they were behind paywalls users could not, or chose not to, access. On today's internet users' ability to access and download free videos and images quickly is greatly expanded. There is no reason to assume data from 2000 can be extrapolated to 2015.

Common arguments against filtering include: first, the problem of users viewing pornography is greatly exaggerated (Pors, 2001; Pautz, 2013; Spacey et al. 2014); second, blocking access to information is unethical for public librarians (Trushina, 2004) and harms populations lacking alternative means of access (Pors, 2001); third, filters can be circumvented by proxy services that are not in themselves illicit (Houghton-Jan, 2010); and fourth, automatic filters let librarians shirk their responsibility to make informed decisions regarding access and parents their responsibility to monitor children (Laughlin, 2003).

Arguments for filtering generally mention that: first, librarians have a responsibility to steer users toward more enlightening materials (Pautz, 2013); second, accessible materials should fit the “profile” and mission of the library (e.g. blocking online games in spaces meant as reading rooms) (Trushina, 2004), which is especially pertinent given limited bandwidth resources; third, librarians have a responsibility to uphold the law and prevent access to patently illegal materials like child pornography (Laughlin, 2003); fourth, internet filtering is analogous to selection decisions made for material collections (Wardak, 2003); fifth, libraries serve communities and should respect community values; and sixth, libraries must maintain a welcoming environment free of sexual harassment (Young, 2003).

Regardless of the strength of any argument for or against filtering, the literature is missing a more thorough analysis of what users themselves expect to find available via a library computer. As Pors points out the internet has changed the demographics of library users (2001, p. 312), and these users may have wants or needs for internet access unrelated to librarians’ principled arguments on the subject.

### **Impact on user groups and staff**

One segment of the literature which this review found wanting was concerning the impact on users groups and staff who must share a public space with those using the internet to view pornographic material. Interestingly, although this topic is addressed infrequently in the academic literature, it appeared often in journalistic and personal media, such as blogs.

When questions of impact are raised in the literature, two qualities are notable in the discussions; namely, that A.) the coverage typically surrounds the occasion of a legal finding and B.) the coverage tends towards examining impact on staff over impact on users. There seems to be very little survey-based research concerning the impact of second-hand viewing of pornography on library users, either on their mental well-being or on their perception of the library or library spaces in general.

One prominent account from a librarian's perspective was published in the “New Breed Librarian” journal in 2002. Adamson details the tribulations of staff resulting from their open policy on internet use when the service was first introduced at her library; she recounts patrons purposefully exposing minors to sexually explicit materials, taunting staff and fellow users with print-outs of images obtained online, and publicly masturbating. The author prefaces her account with a quote by Theyer, which states, in part, “by its very nature, a public library is a public building. That is part of how it serves its critical mission. It is therefore also part of our mission to serve those whose tastes we find repulsive” (2000, p. 60). After detailing the experiences of herself, her fellow staff, and members of the public, she dismisses the mission statement above as “no longer an option” (Adamson, 2002, p. 5). The account then proceeds to describe the media attention paid to their situation and subsequent findings of the court (a case also referred to by Minow (2004) in *First Monday*), all of which resulted in a re-written internet policy (forbidding the accessing of explicit material) and a sexual harassment lawsuit against the library for not

taking steps towards ameliorating a hostile work environment. While the Department of Justice did not take the case, a personal suit later resulted in the library reaching an out-of-court settlement with its staff (Young, 2003).

Contemporaneously, in an editorial published in *Library Journal*, editor-in-chief John Berry (2002) spoke out against this group and their efforts, referring to them as “zealots” and stating that “fear of information” such as they evinced “has always been the most effective weapon of censors and those who wish to impose their morality and ideology on all of us” (p. 8). Clearly, opinion remained divided concerning the proper steps needed to protect users and staff.

On the whole, though, the furor over the above case seems emblematic of the over-diagnosis of libraries' pornography problems that Estabrook and Lakner describe in their 2000 paper. They argue that “media coverage of isolated abuses of Internet access in public libraries can distort public perceptions, leading people to assume that most public libraries offer children easy access to sexually explicit images online” (p. 60). However, through their survey of over one thousand American libraries, they determined that the large majority of libraries do regulate their patrons browsing in some way, whether through posting and enforcing policy guidelines, requiring parental permission of supervision of minors, or using filters.

### **Filtering Legislation**

Most of the existing literature on legislative efforts to regulate access to explicit material online in public libraries and schools and on legal challenges to those efforts, is almost entirely concerned with the debate on this subject within the United States. This is largely because there has been more American legislation directly applicable to public internet access in the recent past than in other countries. The majority of the literature focused on the relevant legislative acts and the challenges mounted to them by the American Library Association (ALA) and other bodies has been published, unsurprisingly, in law reviews rather than journals of library science and related fields. As such, the most prevalent methodology consists of constitutional analysis of Supreme Court decisions.

The primary conflict present within this debate is between lawmakers' desires to make the internet and spaces that offer it freely and publicly safe for children and the interpretations of the First Amendment of the US Constitution, which generally guarantee more than just an individual's freedom of speech *per se*. Leah Wardak writes, “The Supreme Court has recognized that the First Amendment creates an implicit right to receive information because without this ancillary rule, freedom of speech would have no real meaning. The right to receive information directly flows from the right of an individual to send information” (Wardak, 2003, p. 669). In this context, information is understood to include pornography and a wide variety of other materials not generally seen as being “informative” in other contexts. The First Amendment “right to receive information” has historically been interpreted differently for adults and minors, with minors generally being granted fewer guarantees in this regard (Laughlin, 2003, p. 254).

One of the first legislative attempts to regulate minors' access to explicit or "harmful" content online resulted in the passage of the 1996 Communications Decency Act (CDA). Wardak writes, "As enacted, the CDA prohibited (1) the knowing transmission of obscene or indecent messages or images to any person under the age of eighteen, and (2) the sending or displaying of "patently offensive" sexual messages that would be accessible to minors. This statute criminalized the above acts and created penalties of up to two years in prison" (Wardak, 2003, p. 682). However, the CDA was soon challenged by American Civil Liberties Union, the ALA, and others as being too broad and vague in its language, and was subsequently struck down as unconstitutional by the Supreme Court (Wardak, 2003; Cohen & Minow, 2006).

The CDA's spiritual successor, the Children's Internet Protection Act (CIPA) of 2000, is still in effect despite constitutional challenges. CIPA requires that public schools and libraries that provide Internet access and receive federal "e-rate" funding develop a "technology protection measure" (TPM) – in other words, the installation of a filtering system on their computers – preventing users from accessing or downloading explicit imagery. For some libraries, especially in poorer areas, this essentially forces them to adopt an Internet filter or seek alternate funding. Ironically, for larger libraries, the cost of implementing filters sometimes exceeded the federal grant offered (Houghton-Jan, 2010). The primary problem this creates is the inadvertent blocking of non-explicit material caused by the limitations of filtering technology. The Act also requires that *all* computers capable of accessing the Internet, including those used only by staff, have filters installed on them. CIPA does, however, allow for filters to be disabled by library staff at the request of individual adult patrons for legitimate user needs (Spacey et al., 2014).

### **Challenges to CIPA**

Legal challenges to CIPA have been based primarily on the argument that filters block access to material protected by the First Amendment, thereby violating the rights of users. The Supreme Court's justifications for upholding the Act are varied and complex, but include the argument that selectively blocking access to certain sites has a historical parallel in collection development, as well as the point that filters may be turned off on a case-by-case basis without violating the terms of CIPA. Both of these justifications are controversial, and have been debated both within the formal opinions of the Court itself and within the existing literature.

An early challenge to CIPA heard in the District Court for the Eastern District of Pennsylvania resulted in that court determining that "due to the limitations of the filtering technology [...] public libraries could never comply with CIPA's requirements without also restricting access to a substantial amount of protected speech," and the Act was ruled unconstitutional (Wardak, 2003, p. 694). In a 6-3 decision, the Supreme Court reversed the lower court's ruling, upholding CIPA. One of the district court's concerns had been that patrons might be embarrassed to ask for a filter to be disabled so they could, for example, search for information on breast cancer or sexually-transmitted diseases. However, in the assenting (plurality) opinion of the Supreme Court the justices noted that the Constitution "did not guarantee the right to ask for information without embarrassment" (Wardak, 2003, p. 705).



In this decision, the plurality also drew an analogy between filtering and collection development. One of the three dissenting justices argued (correctly, in Wardak's analysis) that this analogy was invalid because librarians do not, and cannot, review individual websites as they would books or other materials for inclusion in physical or electronic collections, whether for the sake of compliance with CIPA or for any other reason (Wardak, 2003). Similarly, in the literature, it has been argued that filtering is akin to weeding or segregating collections for materials deemed objectionable for political, moral, or religious reasons – a practice traditionally opposed by the ALA and other library organizations as unethical. Bernard Bell writes, "When a library secures Internet access, it gains access to all Internet sites. A filter removes some of the Web sites to which the library has right of access. In effect, the library has acquired a set of materials and then refused to make some of those materials available to its patrons" (2000, p. 215-216). This point of view invites a debate on whether generalized Internet content truly qualifies as "material" in a library context. Bell's use of the term "a set of materials" implies a level of cohesion and organization that cannot be applied to the galaxy of resources and diversions that is the Web.

A debate of this kind was evident in a 2010 Washington State Supreme Court ruling on filtering. The majority ruled that a library district's policy of not disabling filters upon request by adult patrons was not unconstitutional, being a form of collection development; however, the dissenting opinion countered "that the policy was more like refusing to circulate a book in the collection because of its content, which would be unconstitutional" (Cannan, 2010).

### **Legal & Practical Solutions to CIPA & Other Legislation**

Because of its opposition to filtering, the ALA has provided instructions on managing software and navigating legislation, intended for librarians who have to contend with CIPA or related laws in their institutions. One such guide was published for Washington libraries in 2012. The packet, "A FAQ on Library Filtering Policies in Washington State" came about following a recent ruling on an area public library's filtering policy, which was deemed "overly broad" (p. 1). The ruling determined that a policy of selective unblocking on demand was sufficient in guaranteeing user's rights to information. The ALA published this document to voice their disagreement with the finding and caution librarians that they still risk violating their patrons' civil liberties by filtering web content. They refer to Chmara's (2012) contention that "the court decision... has little impact beyond that particular library" (p. 3), because the ruling was contingent on the specific library layout and furthermore went unpublished. The document addresses other possible concerns for librarians and recommends more comprehensive resources for further information (such as the ACLU's statement regarding the case) while cautioning against other related documents known to be circulating (namely, those drafted by anti-pornography lobby groups) and dispelling myths. It also recommends the organization's own "Libraries and the Internet Toolkit," available on its website.

Another notable argument advanced by the ALA in this guide is that the responsibility for shielding children from pornography lies primarily with parents, a viewpoint with which, they

claim, “most parents agree” (p. 4). The responsibility of librarians, they counter, is “to safeguard *everyone’s* access to information protected by the First Amendment” (p. 4) [emphasis in the original]. The ALA makes it clear that not only do librarians risk running afoul of their professional commitments by over-filtering the content of their patrons, but they also face significant legal liability should patrons or civil liberties groups take issue with their practices.

Given the seemingly intractable differences between librarians and some user groups on the topic of filtering, Estabrook and Lakner reflect that “it is difficult to understand why more public libraries are not engaging their clientele in helping to draft Internet-use policies” (p. 62). They state that fewer than 10% of libraries in their survey had included members of the public in policy formation.

## Conclusion

Pornography is a pernicious subject for librarians managing internet use – trying to balance the desires of patrons and staff wanting unfettered access online with those wanting a family-friendly environment has proven an extremely complicated task wherever the freedoms of expression and information have strong legal protections. Filtering pornography leaves libraries open to lawsuits for personal rights violations, while refusing to filter could lead to suits over sexual harassment and hostile environments instead. While most librarians are committed to the ideal of freedom of access, even when it violates their personal moral codes (Trushina, 2004, p. 418), new experiences of pornography in the shared space of the public library may necessitate a reassessment of values and priorities.

The largest gap in the literature we have identified is a lack of user perspectives. Although much survey-based research has been conducted on librarians’ opinions of principles in the abstract, less is available concerning their reactions to on-the-job experiences (this is somewhat ameliorated by accounts found in personal media and journalism). There has been almost no consideration of user opinions: How do users perceive the role of the internet in the public library? What kinds of internet access do users desire or expect? What are their experiences or opinions of other users viewing pornography in public? Have their perceptions or usage of the library changed because of internet pornography? What are their ideas for possible compromises or solutions? Moving forward, we would like to help answer these questions.

This gap seems to reflect the legal entanglement of the issue – since the debate involves the framework of individual rights, the opinions of users as a group may be considered irrelevant: if librarians cannot legally interfere with an individual’s viewing choices, are other users’ feelings of discomfort irrelevant – is the onus on them to look the other way? On the other hand, how should librarians react to attempts by lawmakers to impose blanket restrictions on internet use, and should these reactions reflect principles of professional librarianship or the desires of the communities they serve?

This issue is current and reflects the rapid changes in communication technology, has a significant impact on user habits, and challenges researchers, librarians, lawmakers, and the public to more clearly define what the public library means as a shared space for individual pursuits of knowledge and entertainment.

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