



Iowa General Assembly

2003 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

PUBLIC LIBRARIES, FEDERAL FUNDING, AND INTERNET FILTERING

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UNITED STATES V. AMERICAN LIBRARY ASSN., INC. (02-361)

201 F. Supp. 2d 401

<http://supct.law.cornell.edu/supct/html/02-361.ZS.html>

Overview. This case involves a challenge by libraries, library associations, library patrons, and Internet publishers to provisions of the federal Children's Internet Protection Act (CIPA) relating to public libraries. In order to receive federal assistance for Internet access, CIPA requires public libraries to install software to block obscene or pornographic images and to prevent minors from accessing material harmful to minors. On May 31, 2002, the U.S. District Court for the Eastern District of Pennsylvania permanently enjoined the Federal Communications Commission (FCC) and the Institute of Museum and Library Services from withholding federal funds from any public library for failure to comply with the specified CIPA provisions. The U.S. Supreme Court reversed the District Court's decision.

Facts and Issues. Congress enacted CIPA as part of the Consolidated Appropriations Act of 2001. Under CIPA, a library must use filters in order to receive grants under the federal Library Services and Technology Act (LSTA) and E-rate discounts (which are derived from contributions from telecommunications companies to provide discounts of 20-90 percent) for Internet access and support under the Telecommunications Act of 1996. The plaintiffs claim CIPA is unconstitutional because it induces public libraries to violate their patrons' First Amendment rights, and relinquish their (own) First Amendment rights. The government argued that CIPA can be facially invalidated only if it is impossible for any public library to comply with its conditions without violating the First Amendment.

The District Court found that it is currently impossible to develop a filter that neither underblocks nor overblocks a substantial amount of speech. The District Court noted that in 2002, the United States Supreme Court determined that a law is unconstitutional on its face if it prohibits a substantial amount of protected expression. The District Court also noted that less restrictive alternatives exist that further the government's legitimate interest in preventing the dissemination of obscenity, child pornography, and material harmful to minors, and in preventing patrons from being unwillingly exposed to patently offensive, sexually explicit content. Finally, though CIPA permits library authorities to disable the filtering measures for adults for bona fide research or other lawful purposes, the disabling provision can only be applied if a patron requests that an authority disable the filters to unblock a site. The District Court concluded that many patrons are reluctant to make such a request because they are embarrassed, or desire to protect their privacy or remain anonymous. Moreover, the court noted that the unblocking may take days, and may be unavailable, especially in branch libraries.

Analysis. At issue is whether the Internet can be regarded as a public forum, the role of public libraries, and Congress' entitlement to define the limits of a program it establishes through the appropriation of public funds. The U.S. Supreme Court concluded that public forum analysis and heightened judicial scrutiny are incompatible with the discretion that public libraries must have to fulfill their traditional missions, which according to the Supreme Court opinion, is to facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality – not to create a public forum. The Supreme Court also noted that libraries have the capacity to unblock sites, and that the library patron is not compelled by law to give any reason for asking a site to be unblocked or the filtering to be disabled. Patron discomfiture in making such a request is not an issue, according to the opinion, because the Constitution does not

guarantee the right to acquire information at a public library without any risk of embarrassment. Finally, Congress established the E-rate and LSTA programs to help public libraries fulfill their traditional role – and because public libraries have traditionally excluded pornographic material from their other collections, Congress could reasonably impose a parallel limitation on its Internet assistance programs. The Supreme Court noted that libraries are free to offer unfiltered access, but they must do so without federal assistance.

Conclusion. The U.S. Supreme Court held that CIPA does not induce libraries to violate the Constitution and is a valid exercise of Congress' spending power. The U.S. Supreme Court therefore reversed the judgment of the District Court.

Related Iowa Internet Legislation. Legislation enacted by the Iowa General Assembly in 1999 (H.F. 782) encouraged schools to implement Internet filtering services by appropriating \$50,000 to the Department of Education for a contract to purchase Internet connectivity from an Internet service provider that provides Internet filter services for school districts. The General Assembly has also included in each education appropriations bill enacted from 2000 to 2003 a requirement that libraries, as a condition for receipt of Enrich Iowa funds, have an Internet use policy in place, which may or may not include Internet filtering.

Impact on Iowa's Libraries and Patrons. According to State Librarian Mary Wegner, of the 543 public libraries in Iowa, approximately 150 receive federal E-rate funds for Internet connections. She anticipates that the majority of these libraries will not install Internet filters and will lose their federal E-rate funding. During the federal 2002-2003 fiscal year, E-rate funds for Internet access for Iowa's public libraries totaled approximately \$120,000. The U.S. Supreme Court decision does not affect school libraries, because, as the FCC noted in an order issued June 28, 2002, the CIPA provision relating to schools, and therefore school libraries, "has not been challenged as unconstitutional, and thus remains in effect for all participating schools." (http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-196A1.pdf)

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