

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

MULTNOMAH COUNTY PUBLIC LIBRARY;
CONNECTICUT LIBRARY ASSOCIATION;
MAINE LIBRARY ASSOCIATION; SANTA CRUZ
PUBLIC LIBRARY JOINT POWERS AUTHORITY;
SOUTH CENTRAL LIBRARY SYSTEM;
WESTCHESTER LIBRARY SYSTEM;
WISCONSIN LIBRARY ASSOCIATION;
MARK BROWN; SHERRON DIXON BY HER
FATHER AND NEXT FRIEND GORDON DIXON;
JAMES GERINGER; MARNIQUE TYNESHA OVERBY
BY HER AUNT AND NEXT FRIEND CAROLYN
C. WILLIAMS; EMMALYN ROOD BY HER
MOTHER AND NEXT FRIEND JOANNA ROOD;
WILLIAM J. ROSENBAUM; CAROLYN C. WILLIAMS;
QUIANA WILLIAMS BY HER MOTHER AND NEXT
FRIEND SHARON BERNARD; AFRAIDTOASK.COM;
ALAN GUTTMACHER INSTITUTE; ETHAN
INTERACTIVE, INC. D/B/A OUT IN AMERICA;
NATURIST ACTION COMMITTEE; WAYNE L. PARKER;
PLANNED PARENTHOOD FEDERATION OF AMERICA,
INC.; PLANETOUT.COM; JEFFERY POLLOCK; and
SAFERSEX.ORG;

COMPLAINT FOR
DECLARATORY &
INJUNCTIVE RELIEF

Civ. Action _____

Plaintiffs,

v.

UNITED STATES OF AMERICA;
FEDERAL COMMUNICATIONS
COMMISSION; and INSTITUTE OF
MUSEUM AND LIBRARY SERVICES,

Defendants.

Preliminary Statement

1. Plaintiffs are a diverse group of public libraries, library associations, library patrons, and Internet authors and publishers from around

the nation. They seek injunctive and declaratory relief against provisions of the Children's Internet Protection Act (CHIPA), a federal law that will prevent adults and minors at libraries nationwide from accessing constitutionally protected speech on the Internet. §1712, §1721(b) (to be codified at 20 U.S.C. §9134 and 47 U.S.C. §254(h)). CHIPA distorts the traditional function of libraries, which is to provide uncensored access to the widest possible range of ideas and information.

2. Libraries across America now provide access to the vast and valuable information resources of the Internet, which is fast becoming the library of the future as more of the world's information is put online. As Congress itself recognized, libraries are vital and necessary access points to the Internet, especially for the large population of persons who cannot afford a home computer.

3. CHIPA requires all public libraries that participate in certain federal programs to install and enforce technology protection measures that protect against access to material that is obscene, child pornographic, or harmful to minors. In so doing, CHIPA imposes an impossible and unconstitutional condition on public libraries. As Congress itself concluded, every available technology protection measure blocks access to a wide range of socially valuable online speech. This technology cannot be "fixed" to block only speech that is unprotected by the Constitution. Computer programs cannot make distinctions between protected and unprotected speech. By

forcing public libraries to install such technology, CHIPA will suppress ideas and viewpoints that are constitutionally protected from reaching willing patrons.

CHIPA thus imposes a prior restraint on protected speech in violation of the Constitution.

4. CHIPA is also arbitrary and irrational because existing technology fails to block access to much speech that Congress intended to block, and thus will not protect library patrons from objectionable content. In contrast, librarians are already utilizing their expertise to help library patrons avoid unwanted content and find online content they want.

5. CHIPA mandates that adults as well as minors utilize technology protection measures when accessing the Internet, and permits circumvention of such measures only if an adult (and in some cases a minor) can show a "bona fide research purpose." This standardless licensing scheme, which subjects protected speech to a permission requirement, is yet another of CHIPA's fatal constitutional flaws.

6. Most technology protection measures are designed to prevent young children from accessing speech that may be appropriate for adults and older minors. By forcing adults to use these products, CHIPA reduces adults to speech fit for children, contrary to the Supreme Court's repeated holding that doing so violates the First Amendment.

7. The vast majority of companies that produce technology protection measures consider their list of blocked sites to be proprietary, and refuse to

disclose their lists to their customers. CHIPA will thus force libraries to install a system of private, prior blind censorship that will transform Internet access at libraries from an equalizing and democratizing opportunity to a randomly censored medium that will no longer serve the communities that need it most. This censorship scheme violates the First Amendment.

Jurisdiction and Venue

8. This case arises under the Constitution and laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the Constitution and 28 U.S.C. §1331 and §1361.

9. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 et seq.

10. The Court has the authority to award costs and attorneys' fees under 28 U.S.C. §2412.

11. Venue is proper in this district under 28 U.S.C. §1391(e).

12. Under §1741 of CHIPA, this action must be adjudicated by a three-judge court convened pursuant to 28 U.S.C. §2284.

The Parties

13. Plaintiff Multnomah County Public Library is a department of Multnomah County, Oregon that provides library services through the Central Library and fifteen branches in the Portland, Oregon metropolitan area.

14. Plaintiff Connecticut Library Association is a not-for-profit professional organization of over 1,000 librarians, library staff, friends and trustees. Its office is in Willimantic, Connecticut.

15. Plaintiff Maine Library Association is a not-for-profit association of libraries and persons interested in library work, with approximately 800 members. It maintains an office in Augusta, Maine.

16. Plaintiff Santa Cruz Public Library Joint Powers Authority is a city-county library system with libraries throughout the County of Santa Cruz, California.

17. Plaintiff South Central Library System provides services to fifty independent member public libraries in seven counties located in central and southern Wisconsin. Its headquarters are in Madison, Wisconsin.

18. Plaintiff Westchester Library System serves the people of Westchester County, New York through 38 independent member public libraries. Its headquarters are in Ardsley, New York.

19. Plaintiff Wisconsin Library Association is a not-for-profit professional organization of over 2000 libraries and library staff throughout the state of Wisconsin. It maintains an office in Madison, Wisconsin.

20. The library and library association plaintiffs, identified in paragraphs 13 - 19 above, sue on their own behalf, and on behalf of their members and patrons.

21. Plaintiff Mark D. Brown lives in Royersford, Pennsylvania and regularly uses the Internet at the Free Library in Philadelphia, Pennsylvania.

22. Plaintiff Sherron Dixon appears by her father and next friend Gordon Dixon. She is a sixteen-year-old who lives in Philadelphia, Pennsylvania and uses the Internet at the West Oak Lane Branch of the Philadelphia Free Library.

23. Plaintiff James Geringer lives in Portland, Oregon and uses the Internet at the Multnomah County Public Library.

24. Plaintiff Marnique Tynesha Overby appears by her aunt and next friend Carolyn C. Williams. She is a fifteen-year-old who lives in Philadelphia, Pennsylvania and uses the Internet at the West Philadelphia Regional Branch of the Philadelphia Free Library.

25. Plaintiff Emmalyn Rood appears by her mother and next friend Joanna Rood. She is a fifteen-year old who lives in Portland, Oregon and regularly uses the Internet at the Multnomah County Public Library.

26. Plaintiff William J. Rosenbaum lives in Winthrop, Maine and uses the Internet at the Bailey Public Library.

27. Plaintiff Carolyn C. Williams lives in Philadelphia, Pennsylvania and uses the Internet at the Passyunk Branch of the Philadelphia Free Library.

28. Plaintiff Quiana Williams appears by her mother and next friend Sharon Bernard. She is a sixteen-year-old who lives in Philadelphia,

Pennsylvania and uses the Internet at the Cobbs Creek Branch of the Philadelphia Free Library.

29. Plaintiff AfraidToAsk.com is a web site that provides personal information and advice about health care. AfraidToAsk.com is incorporated in Rhode Island and has its principal place of business in Saunderstown, Rhode Island.

30. Plaintiff The Alan Guttmacher Institute ("AGI") is a not-for-profit corporation for reproductive health research, policy analysis and public education. AGI maintains a web site that provides a wide range of statistical and analytical public education materials. AGI has its principal place of business in New York City.

31. Plaintiff Ethan Interactive, Inc. d/b/a Out In America, is a leading online content provider that owns and operates 64 free web sites with information for gay, lesbian, bisexual and transgendered persons. Ethan Interactive, Inc. is a for-profit corporation that is incorporated in Ohio and has its principal place of business in Columbus, Ohio.

32. Plaintiff Naturist Action Committee is a non-profit corporation that uses the political process to advocate for the rights of nudists throughout North America. The Naturist Action Committee is incorporated in Nevada and has its principal place of business in Oshkosh, Wisconsin.

33. Plaintiff Wayne L. Parker resides in Perkinston, Mississippi, and was the Libertarian candidate in the 2000 U.S. Congressional election for the

Fifth District of Mississippi. Mr. Parker's web site was a critical part of his campaign.

34. Plaintiff Planned Parenthood Federation of America, Inc. ("Planned Parenthood") is the leading national voluntary organization in the field of reproductive health care. Planned Parenthood owns and operates several web sites that contain information concerning safe and legal access to all reproductive health services. Planned Parenthood is a non-profit corporation that is incorporated in New York and has its principal place of business in New York City.

35. Plaintiff PlanetOut Corporation is a leading online content provider for gay, lesbian, bisexual and transgendered persons. It is a for-profit corporation that is incorporated in Delaware and has its principal place of business in San Francisco, California.

36. Plaintiff Jeffery Pollock resides in Portland, Oregon, and was the Republican candidate in the 2000 U.S. Congressional election for the Third District of Oregon. He operates a web site which is now promoting his candidacy for Congress in 2002.

37. Plaintiff Safersex.org is a free web site that contains information and educational materials about safer sex. Safersex.org is operated out of Santa Monica, California.

38. The web site plaintiffs, identified in paragraphs 29 – 37 above, sue on their own behalf and on behalf of their readers.

39. Defendant United States of America is responsible for enforcement of CHIPA, and is a proper defendant pursuant to 5 U.S.C. §702.

40. Defendant Federal Communications Commission (FCC) is an independent federal agency. The FCC supervises the administration of the federal e-rate program, 47 U.S.C. §254, and is responsible for enforcing §1721(b) of CHIPA, to be codified at 47 U.S.C. §254(h). The Chair of the FCC is Michael Powell.

41. Defendant Institute of Museum and Library Services (IMLS) is an independent federal agency responsible for administering grants provided under the Library Services and Technology Act, 20 U.S.C. §9121 et seq (LSTA), and for enforcing §1712 of CHIPA, to be codified at 20 U.S.C. §9134. The Acting Director is Beverly Sheppard.

The Statute at Issue

42. The Children's Internet Protection Act (CHIPA) was signed into law on December 21, 2000. It will become effective on April 20, 2001. §1712(b) (to be codified at 20 U.S.C. §9134); §1721(h) (to be codified at 47 U.S.C. §254(h)).

43. Section 1721(b) of CHIPA requires public libraries that participate in the federal e-rate program to certify to the FCC that they are “(i) enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to computers with Internet access that protects against access through such computers to visual depictions that are (I) obscene; or (II)

child pornography; and (ii) is enforcing the operation of such technology measure during any use of such computers.” §1721 (to be codified at 47 U.S.C. §254 (h)(6)(C)).

44. CHIPA also requires identical operation and enforcement of “technology protection measures . . . during any use of such computers” by minors, but in such cases, the measures must also protect against access to visual depictions that are "harmful to minors." §1721 (to be codified at 47 U.S.C. §254 (h)(6)(B)).

45. CHIPA provides that “[a]n administrator, supervisor, or other person authorized by the certifying authority . . . may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.” No definition of “bona fide research or other lawful purpose” is provided. §1721 (to be codified at 47 U.S.C. §254 (h)(6)(D)).

46. Obscenity and child pornography are defined by reference to Title 18 of the U.S. Code. “Harmful to minors” is defined as “any picture, image, graphic image file or other visual depiction that—(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excrement; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and (iii) taken as a whole, lacks serious literary, artistic, political, or

scientific value as to minors.” §1721(b) (to be codified at 47 U.S.C. §254 (h)(6)(G)).

47. Section 1721(b) of CHIPA applies to libraries that receive money through the federal e-rate program if that money is used for “Internet access, Internet service, or internal connections.” §1721(b) (to be codified at 47 U.S.C. §254(h)(6)(A)(ii)).

48. The purpose of the e-rate or “universal service” program is to ensure that consumers in “all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services,” including the Internet, at “rates that are just, reasonable, and affordable.” The e-rate program was authorized by Congress as part of the Telecommunications Act of 1996. 47 U.S.C. §254(h).

49. The e-rate program requires local telecommunications carriers, as a condition of doing business, to charge libraries “rates less than the amounts charged for similar services to other parties.... [t]o ensure affordable access to and use of such services by such entities.” 47 U.S.C. §254 (b)(3), (h)(1)(B).

50. The e-rate program does not involve any funds disbursed by the federal treasury. Rather, the e-rate is a discounted rate for telecommunications services provided to libraries by local telecommunications carriers.

51. The e-rate program is administered by a non-profit corporation

called the Universal Service Administrative Company (USAC). USAC is subject to the control and supervision of the FCC. 47 U.S.C. §254; 47 C.F.R. 54.500 et. seq.

52. The amount of money received by a library under the e-rate program depends, in part, on the percentage of students in local schools who are eligible for the National School Lunch Program, and on whether the library is located in an urban or rural area. 47 C.F.R. 54.505. Libraries serving a higher percentage of poor and other disadvantaged patrons are entitled to a greater discount in order to increase the availability of Internet access to the neediest patrons.

53. In 2000-01, about 4500 libraries and about 800 consortia were approved for e-rate funding totaling approximately \$250,000,000.

54. Libraries subject to CHIPA must certify compliance as part of their authorization for the e-rate discount. Libraries that do not now have technology protection measures must certify in the first year after the effective date of CHIPA that they are “undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures, meeting the requirement for certification.” In the second year after the effective date, they must certify that they have complied. Libraries that now have technology protection measures must certify in the first year after the effective date that they have complied. Libraries that fail to certify compliance “shall not be eligible for services at discount rates.”

§1721(b) (to be codified at 47 U.S.C. §254 (h)(6)(E)(ii)(I) and (II)).

55. The FCC is charged with issuing regulations concerning implementation of Section 1721(b) of CHIPA, including regulations defining actual dates by which certification must be made. These regulations must be issued by April 20, 2001. §1721(b) (to be codified at 47 U.S.C. §254 (h)(6)(f)).

56. CHIPA requires that any library that “knowingly fails to ensure the use of its computers in accordance with a certification . . . shall reimburse all funds and discounts received [through the e-rate program] . . . for the period covered by such certification.” §1721(b) (to be codified at 47 U.S.C. §254 (h)(6)(F)(i)).

57. Section 1712 of CHIPA applies to libraries that do not receive the e-rate discount but receive funds pursuant to 20 U.S.C. §9134(b), the Library Services and Technology Act (LSTA), “to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet.” §1712 (to be codified at 20 U.S.C. 9134(f)(1)).

58. Section 1712 requires the same installation and enforcement of technology protection measures as is required by Section 1721(b). §1712 (to be codified at 20 U.S.C. 9134(f)(1)(A) and (B)).

59. Section 1712 provides that “[a]n administrator, supervisor, or other authority may disable a technology protection measure... to enable access for bona fide research or other lawful purposes.” §1712 (to be codified at 20 U.S.C. §9134(f)(3)). Unlike the comparable e-rate section, this provision

appears to apply to minors as well as adults.

60. Unlike the e-rate program, libraries that receive LSTA funds are not required to return them if they fail to comply with CHIPA. §1712 (to be codified at 20 U.S.C. 9134 (f)(5)(B)).

61. The Library Services and Technology Act (LSTA) is contained within the Museum and Library Services Act. 20 U.S.C. 9121 et. seq. The Museum and Library Services Act creates the Institute of Museum and Library Services (IMLS), which is authorized to disburse LSTA grants to state libraries and individual libraries. All of the LSTA funds affected by CHIPA are provided directly to the states, with each state receiving a minimum allotment, and additional funds provided on the basis of population. States may then provide grants to individual libraries. IMLS support reaches libraries in thousands of communities every year. The authorization of LSTA funds to libraries for Fiscal Year 1999 was \$166.2 million.

62. CHIPA's restrictions are not limited to library Internet access supported only by the federal e-rate and LSTA programs. Both the e-rate restrictions in Section 1721(b) and the LSTA restrictions in Section 1712 require libraries to certify that technology protection measures are in place on "any of its computers with Internet access" and "during any use of such computers." §1721(b) (to be codified at 47 U.S.C. §254(h)(6)(C)(i)-(ii)); §1712 (to be codified at 20 U.S.C. §9134(f)(1)(B)(i)-(ii)) (emph. added).

63. A library subject to CHIPA must install and enforce the operation

of technology protection measures on all of its computers with Internet access even if the library purchased the computers or paid for Internet access with money that is not from federal programs.

64. Section 1732 of CHIPA requires that libraries receiving the e-rate discount also adopt and implement an Internet safety policy. §1732 (to be codified at 47 U.S.C. §254(l)). Plaintiffs do not challenge that section. Unlike the restrictions in Sections 1712 and 1721(b) of CHIPA, which do not incorporate individualized determinations of contemporary community standards, Section 1732 expressly prohibits federal review or control over the local determination of content "inappropriate for minors."

Factual Allegations

The Internet

65. The Internet is an international network of interconnected computers which enables more than 400 million users to communicate with one another and to access vast amounts of information from around the world. It may well be the premier technological innovation of the present age.

66. The Internet presents extremely low entry barriers to anyone who wishes to provide or distribute information. Unlike television, cable, radio, newspapers, magazines or books, the Internet provides the average citizen with an affordable means for communicating with a worldwide audience.

67. Any person with access to the Internet may communicate and

retrieve information on almost any conceivable subject. The content on the Internet is as diverse as human thought.

68. The best known category of communications over the Internet is the World Wide Web ("the web"), which allows users to search for and retrieve information stored in remote computers. As the Supreme Court noted, "The Web is . . . comparable, from the reader's viewpoint, to a vast library including millions of readily available and indexed publications . . ." Reno v. ACLU, 117 S. Ct. at 2335.

69. From the publishers' point of view, the web constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers and researchers. Once a provider posts content on the Internet, it is available to all other Internet users worldwide.

70. Perhaps the most widely used method of communication on the Internet is electronic mail, or "e-mail." Free web-based e-mail services are routinely used by patrons at public libraries who have no computer or Internet access at home. Online discussion groups and chat rooms are also available through many web sites and cover virtually every topic imaginable.

71. Internet users seldom encounter content accidentally. A document's title or a description of the document will usually appear before the document itself, and in many cases the user will receive detailed information about a site's content before he or she need take the step to access the document.

Public Libraries and Internet Access

72. Libraries in America are cornerstones of the communities they serve. The mission of public libraries is to provide free access to books, ideas, resources, and information for education, employment, enjoyment and self-government. Libraries celebrate and preserve democratic society by making available the widest possible range of viewpoints, opinions, and ideas, so that all individuals have the opportunity to become informed, literate, educated, and culturally enriched.

73. Libraries are used by a large segment of Americans. At least one member of almost forty-five percent of all U.S. households visited a public library within the last month. Among households with children under the age of eighteen, nearly sixty-one percent visited a library within the last month.

74. Today's libraries are vital community centers where people of all ages and means connect to ideas and each other. Many libraries routinely offer book discussion groups, author presentations, lectures, music and dance performances, and film series. Libraries offer adult literacy programs, continuing education classes, and one-on-one assistance to patrons every day. Reference librarians across America answer more than 7 million questions weekly.

75. Given their central role as information centers, it is no surprise that libraries have been at the forefront of the digital revolution. They were

among the first to recognize the power of online databases and networks, and to offer free public access to the Internet.

76. A recent survey by the National Commission on Libraries and Information Science reveals that more than 95 percent of the nation's libraries now offer public access to the Internet (up from only 28 percent in 1996). In the past two years alone, public libraries have nearly doubled the number of Internet workstations offered to the public.

77. The Internet has provided unprecedented opportunities to expand the scope of information from around the globe that is available to users in public libraries, at substantially less cost than comparable amounts of printed material. Many documents (published by individuals, private organizations, and governments) are now produced only in electronic form and not in print.

78. Patrons now use their libraries not just to connect with others in their local communities, but to the global community in ways that were never before possible. An American eighth grader no longer relies solely on encyclopedias to teach her about local customs in Zimbabwe. She signs on to the Internet and asks a fellow twelve-year-old in Zimbabwe to answer her questions. An amateur writer of haiku does not have to wait until a poet visits his library for inspiration; he can join a virtual community of haiku poets on the Internet.

79. Public libraries play a critical role in affording access to the economic and social benefits of the Internet to those who do not have

computers at home, assuring that advanced information services are universally available to all segments of the American population on an equitable basis.

80. For the many people who cannot afford a personal computer or network connections, Internet access terminals at public libraries may be their only means of accessing the Internet. Minorities, low-income persons, the less educated, children of single-parent households, and persons who reside in rural areas are less likely than others to have home Internet access. For example, Whites are more likely to have access to the Internet from home than Blacks or Latinos have from *any* location. Black and Latino households are less than half as likely to have home Internet access as White households. According to the National Telecommunications and Information Administration, this "digital divide" is growing.

81. High-speed Internet access is not available to home users in many rural and remote parts of the country. In these areas, public libraries often provide the only high-speed access to the Internet.

82. In addition to providing online access, libraries provide free essential training to patrons who may never before have used a computer, let alone the Internet. Such continuing education is vital in a world in which computer and Internet skills are required for many jobs.

Technology Protection Measures

83. CHIPA defines a "technology protection measure" as "a specific technology that blocks or filters Internet access to the material covered by a certification." 47 U.S.C. §254 (h)(6)(H).

84. There are no technology protection measures that block access only to material that is "obscene," "child pornography," or "harmful to minors," as defined by CHIPA.

85. There are no technology protection measures that block access to all material that is "obscene," "child pornography," or "harmful to minors," as defined by CHIPA.

86. It is not possible to create a technology protection measure that blocks access only to material that is "obscene," "child pornography," or "harmful to minors" as defined by CHIPA, or that blocks access to all material that meets those definitions.

87. There are private companies that produce technology designed to block access to particular content on the web. This technology is commonly referred to as "blocking software" or "blocking programs." Blocking programs are computer software programs that are designed to block content on the Internet that would otherwise be accessible by all Internet users.

88. Blocking program vendors establish criteria to identify specified categories of speech on the Internet and configure their programs to block web pages containing those categories of speech. Some blocking programs block as few as six categories of information. Others block up to 29 or more

categories. Blocked categories may include hate speech, criminal activity, sexually explicit speech, "adult" speech, violent speech, or speech using specific disfavored words. Some of the blocked categories express disapproval of a particular viewpoint, such as a category that blocks all information about "alternative" lifestyles including homosexuality.

89. None of the existing blocking program vendors even claim to block categories that meet the legal definitions of "obscenity," "child pornography," or "harmful to minors."

90. Once blocking program vendors have established the content categories they intend to block, they establish a method of identifying web pages that contain speech that fits those categories. They generally conduct automated searches based on words or strings of words, similar to searches done by standard search engines such as AltaVista.

91. Generally, web pages are blocked in their entirety if any content on the web page fits the vendors' content categories, regardless of whether the content on the page is textual or visual or both.

92. It is not now technologically possible for blocking program vendors to conduct automated searches for visual images that fit their content categories, or are communicated through e-mail, chat, or online discussion groups.

93. After identifying specific web pages to block, the blocking program vendors add these pages to a master list of web pages to block ("blocked sites

list"). Some blocking program vendors claim to have employees review individual web pages before adding them to the blocked sites list.

94. Employees who are used by blocking program vendors to review web pages are not judges or lawyers and receive no legal training. There is a great deal of employee turnover in these jobs.

95. All blocking programs depend on the exercise of subjective human judgment by the vendor to decide what speech is acceptable and what is unacceptable.

96. Blocking program vendors, and not librarians or other government officials, decide which sites to place on their blocked sites lists.

97. Blocking program vendors generally treat their list of blocked sites as a trade secret. They do not reveal this information to their customers, prospective customers, or the public.

98. There are only two blocking techniques that can be used by blocking program vendors to block access to email, chat, and online discussion groups. First, the blocking programs may block access to all e-mail, chat and online discussion groups. Second, the programs may selectively block out particular words communicated through e-mail, chat, or discussion groups. For example, the program may replace the word "breast" with "xxx", regardless of the context in which the word is used.

99. There is no method by which a blocking program can block specific types of visual images. Some programs can be set to block all visual

images available on the web. Alternatively, programs can be set to block the subset of all visual images on web pages contained on the program's blocked sites list (which are identified through text-based searches). In both cases, the program blocks images regardless of whether they meet the criteria defined by the program vendor.

100. An operational blocking program blocks Internet users from accessing web pages on the program's blocked sites list.

101. Many blocking programs are designed to be installed on a computer server that is remotely connected to a number of other computers that provide Internet access.

102. Server-based blocking programs are the most common and least expensive type of program for institutional users such as libraries.

103. Blocking programs block speech on the Internet in advance of any judicial test of the legal status of the blocked speech and without any assessment by a court or jury as to local community standards.

104. Blocking programs routinely block a wide range of speech that is protected by the Constitution for both adults and minors. First, blocking products frequently block sites, including those of some of the plaintiffs, that contain speech that meets their criteria but that is constitutionally protected. Second, blocking products frequently block sites, including those of some of the plaintiffs, that do not meet their criteria and are constitutionally protected.

105. Reports have publicly documented thousands of examples of

sites containing protected speech that are blocked by the major blocking programs.

106. In Mainstream Loudoun v. Loudoun County, 2 F.Supp.2d 781 (E.D.Va. 1998), which held that mandatory use of blocking software in public libraries is unconstitutional, the product X-Stop was found to block as sexually explicit the sites of the American Association of University Women-Maryland chapter, the Quakers, the San Francisco Examiner, a map of Disney World, the University of Minnesota, the Glide Memorial Methodist Church, and the text of the Supreme Court's decision in Roe v. Wade.

107. Another major product, CyberPatrol, has blocked as sexually explicit the Ontario Center for Religious Tolerance, the HIV/AIDS Information Center of the Journal of the American Medical Association (JAMA), the University of Newcastle's computer science division, Nizkor (a Holocaust remembrance site), Nike shoes, the National Academy of Clinical Biochemistry, the U.S. Army Corps of Engineers, the MIT Student Association for Free Expression, and the Electronic Frontier Foundation.

108. Another major product, SmartFilter, was reported by The Censorware Project to block as sexually explicit the Mormon church, numerous mainstream publications reporting on the Monica Lewinsky/President Clinton news, a site for Doc Martens shoes, a 1985 NBA Championship video, the Hasbro toy company, a Detroit radio station, a list of all of the passengers on the Mayflower, and Seventeen Magazine.

109. Another major product, I-Gear, was reported by Peacefire to block the site of the British Conservative Party, the full text of the novel Jane Eyre, and pages on the web sites of the American Civil Liberties Union and the Electronic Privacy Information Center.

110. Another major product, WebSense, was reported by The Censorware Project to block as sexually explicit the Jewish teens web site, the Liza Minnelli web site, a grocer, a Japanese baseball team, an Indiana soccer team, and the Laboratory of Molecular Medicine at Michigan State University.

111. All of the blocking program vendors admit that they do not block all of the web pages that meet their criteria.

112. The web is now estimated to contain over 1.5 billion pages, and continues to grow and change at a geometric rate. Even the most sophisticated search techniques only find less than 20% of the web.

113. Although blocking program vendors provide updates of their list of blocked sites, it is impossible for them to find all of the content on the Internet that meets their criteria, or to keep up with the rapidly increasing and changing content available on the Internet.

114. The flaws of blocking programs are not a matter of individual flaws in individual products. They are inevitable given the task and the limitations of the technology.

115. The federal government and others have repeatedly documented flaws in blocking programs.

116. The United States Attorney General has said that blocking programs inescapably fail to block objectionable speech because they are unable to screen for images. Brief for the Appellants, Reno v. ACLU, No. 96-511 (January 1997) at 40-41.

117. Congress itself has repeatedly noted the flaws of blocking software. Such software, a House report found, is “not the preferred solution” because of the risk that “protected, harmless, or innocent speech would be accidentally or inappropriately blocked.” H.R. Rep. No. 105-775 (1998) at 19.

118. Congress appointed a panel in October 1998, entitled the Child Online Protection Act Commission (“COPA Commission”), whose primary purpose was to “identify technological or other methods that will help reduce access by minors to material that is harmful to minors on the Internet.” In October 2000, the Commission reported that blocking “technology raises First Amendment concerns because of its potential to be over-inclusive in blocking content. Concerns are increased because the extent of blocking is often unclear and not disclosed, and may not be based on parental choices.” The Commission did not recommend any government-imposed mandatory use of blocking technologies.

119. Other reports have repeatedly confirmed the deficiencies of blocking programs. The Censorware Project and Peacefire have each done a number of reports that discuss the flaws of blocking programs.

120. The Internet Filter Assessment Project, which was developed and

conducted by librarians, detailed the deficiencies of blocking software in a report published in 1997.

121. In March 2001, Consumer Reports issued a report on Internet blocking programs. It found that all of the blocking programs tested blocked some sites with "legitimate content" on controversial subjects. Some blocking programs blocked as many as one in five sites. It also found that all of the blocking programs failed to block 20% of the "inappropriate" sites tested.

The Impact of CHIPA on the Library Plaintiffs

122. Plaintiffs who are libraries and library associations and their members ("the library plaintiffs") all currently receive either the e-rate discount or LSTA funds, or both, and are covered by CHIPA. They have policies that oppose censorship and prevent the exclusion of materials from libraries based on viewpoint. CHIPA will force the library plaintiffs to either give up federal funds upon which they rely or violate their own anti-censorship policies by installing unwanted technology protection measures that block access to protected speech.

123. CHIPA will force the library plaintiffs to install technology protection measures on all of their Internet access terminals, regardless of whether federal programs paid for the terminals or Internet connections.

124. CHIPA will have a particularly negative impact on patrons of the library plaintiffs whose only Internet access is at the library.

125. The library plaintiffs do not know of any technology protection measure that can accomplish CHIPA's mandate to block access to material that meets the legal definition of "obscenity," "child pornography," or "harmful to minors." They do not know whether installation of available blocking programs constitutes compliance with CHIPA. If they are forced to install such programs, they and their patrons will be denied access to protected speech.

126. It would cost significantly more money for the library plaintiffs to set up a technology protection measure that would block different categories of content for adults and minors, as contemplated by CHIPA. Some libraries may be forced to require adults and minors to use the same system, which would inevitably reduce adults to accessing only material that is fit for children.

127. CHIPA will impose a significant burden on the library plaintiffs in order to obtain technology protection measures, train staff and patrons to use them, oversee patron usage, and educate the public about them.

128. The cost of installing and maintaining the technology protection measures required by CHIPA will inevitably reduce the amount of money available to the library plaintiffs for purchase of a wide range of books and other information resources, including Internet access.

129. It would be practically and technologically infeasible for the library plaintiffs to install a technology protection measure that could be temporarily disabled upon a showing of a "bona fide research purpose," as contemplated by CHIPA.

130. Although CHIPA provides that technology protection measures may be disabled during use by some patrons for a "bona fide research purpose," the library plaintiffs do not know the meaning of "bona fide research purpose," how they should apply this exception to their staff or patrons, who must decide what qualifies as "bona fide research," or how the exception could be applied without violating their patrons' privacy and anonymity rights contrary to the longstanding practices and policies of the library community.

131. The library plaintiffs have policies for Internet usage that prohibit access to illegal content and set other guidelines for using the Internet at the library. They also use a variety of methods to help patrons find the content they want and avoid unwanted content. The library plaintiffs have received very few complaints as a result of providing Internet access.

Multnomah County Public Library

132. Plaintiff Multnomah County Public Library is the oldest public library west of the Mississippi, with a history that dates to 1864. Today, Central Library and the 15 branch libraries that make up the library system house more than 400 computer search stations for the public and a collection of 1.7 million books and other library materials.

133. As Oregon's largest public library, Multnomah County Library serves over one-fifth of the state's population with a wide variety of programs and services. As of 2000, Multnomah County had 660,000 people. The last available census figures indicated that approximately thirteen percent of its

residents live below the poverty line, and approximately fourteen percent are Black, Latino, or Asian.

134. Multnomah County Library serves nearly 500,000 total registered card holders who check out an average of 18 items per resident annually – totaling over 12 million items in 1999-2000.

135. Multnomah County Library is an important cultural center in the Portland area, offering readings by authors and others, story hours for children of every age, plays, art shows, and help with homework.

136. Multnomah County Library offers Internet access for library patrons at the Central Library and all of the branches. It estimates that up to 18,000 users per week access the Internet at the 131 terminals in the Central Library alone.

137. Multnomah County Library receives approximately \$100,000 per year from the e-rate program. The library has already submitted application forms to receive funding in 2001-02.

138. Multnomah County Library receives approximately \$100,000 in LSTA funds per year. None of the funds currently received are used for Internet access or computers, but the library may apply for LSTA funds for Internet access in its fall 2001 application.

139. Multnomah County Library offers Internet classes that over 2000 people attended last year. The Library also offers informal Internet training as

needed to thousands more, and has trained volunteers (called Techno Hosts) that help customers navigate the Internet safely.

140. Multnomah County Library maintains the following web pages to assist users in finding age- and topic-appropriate sites: The KidsPage, Outernet (for young adults), Homework Center and Electronic Resources. The children's web page is the default web page on computers in the children's section of the libraries, which are available exclusively for use by children and their caregivers. Library staff are available to provide assistance and to help identify appropriate sites. The Library also encourages parents and children to read the pamphlet, "Child Safety on the Information Highway," available for free from all library locations.

141. Multnomah County Library provides wrap-around privacy screens to maintain its commitment to a non-threatening Internet environment, in which individual library users choose web material they deem appropriate without risk of potential offense to other patrons.

142. Multnomah County Library also offers all patrons the opportunity to use a blocking program when they obtain Internet access. SmartStuff's FoolProof Internet is installed on the library's central server and is configured to block "Pornography." No patron is required to use the software.

143. Multnomah County Library's current Internet policy was adopted after careful and extensive study by library staff and by the Library Board, fifteen people appointed by the County Chair and confirmed by the Board of County

Commissioners. A board-sponsored committee, which included members of the Friends of the Library, considered the policy.

Connecticut Library Association (CLA)

144. Plaintiff Connecticut Library Association (CLA) was the fifth state library association in the country and has been in existence since 1891.

145. CLA “supports the principle of open, free and unrestricted access to information and ideas, regardless of the format in which they appear.” Over two years ago, the Executive Board of CLA adopted a policy that “emphatically opposes attempts by federal and state governments to mandate [blocking software] use” in public libraries. The CLA policy states that “Due to the imperfections of filters, valuable information is blocked, thus preventing individuals from retrieving the information they seek as well as preventing the library from fulfilling its basic mission.”

146. Many CLA member libraries are covered by CHIPA. For example, the Hartford Public Library serves 165,000 people in Hartford, Connecticut through its central library and nine branches. The Hartford Public Library provides 90 public access Internet terminals. Because of the high number of low income people that it serves, the Library has received an 89% e-rate discount totaling approximately \$42,000 per year since 1998. Many Hartford residents report having little or no knowledge of the Internet. The Hartford Public Library provides Internet access and training to up to 4,000 people each month. For these patrons, the Library is their only opportunity for digital equality

with the larger society.

Maine Library Association (MLA)

147. Plaintiff Maine Library Association (MLA) was founded in 1892. The object of the Association is to “to promote and enhance the value of libraries and librarianship, to foster cooperation among those who work in and for libraries, and to provide leadership in ensuring that the global information network is accessible to all citizens via their libraries.” There are MLA members affiliated with all of Maine's 271 public libraries.

148. The Maine Library Association has a policy that provides, “The Maine Library Association believes that a democracy can only succeed if its citizens have access to the information necessary to form opinions and make decisions on issues affecting their lives.” While MLA recognizes the issues and concerns generated from providing full access to the Internet, it believes that “filtering devices block access to constitutionally protected speech and prevent library users from accessing materials they determine to be most suitable for themselves.”

149. MLA's policy further recommends “that libraries teach responsible and effective use of the Internet through handouts, online guides, training sessions, and Web pages highlighting library recommended sources. In addition, the Association encourages the management of this resource in ways that protect the privacy of Internet users.”

150. As of 2001, MLA member libraries will receive e-rate funding

through a consortium sponsored by the Maine State Library. Approximately 1200 sites will participate including about 270 public libraries and an additional 60-70 specialty libraries.

151. The consortium will provide networked access to the Internet for participating libraries through the UNET system server at the University of Maine. Both state and e-rate funds will be used to support the network so that access for individual libraries will be essentially free.

152. The Auburn Public Library is a member of MLA and serves the town of Auburn, Maine, with a population of over 24,000. It provides five Internet access terminals to the public. The Auburn Public Library is eligible for \$2,300 through the e-rate program in 2001-02. The Auburn Public Library's service area poverty rate is 18.4%, and the library staff believes that many of their Internet users are the lower income residents in the area. The Auburn Public Library uses privacy screens and provides preselected links for children and teens to assist patrons in finding appropriate material and avoiding content they might find offensive.

153. The Portland Public Library is a member of MLA serving over 70,000 library patrons in the city of Portland, Maine. It circulated over 600,000 items last year. The Library provides fifty public access Internet terminals through its Main Library and five branches. The Library serves a significant immigrant and refugee population; 25% percent of people living within one mile of the Main Library live at or below the poverty rate. The e-rate program

authorized approximately \$25,000 to the Portland Public Library in 2000-01.

Santa Cruz Public Library Joint Powers Authority

154. The Santa Cruz Public Library Joint Powers Authority ("Santa Cruz Public Library") has ten branch libraries and a bookmobile serving all of Santa Cruz County, California with the exception of the City of Watsonville, which maintains its own library.

155. Almost 1.5 million items were checked out of the Santa Cruz Public Library during 1999-2000. The Santa Cruz Public Library has about 162,000 registered borrowers, which is 76% of the Santa Cruz population of 213,600. In addition to borrowing books, patrons can take advantage of the library's free Spanish language courses, poetry writing workshops, chess classes, and volunteer tax advice.

156. The Santa Cruz Public Library has provided Internet access to patrons through a server-based and networked system since 1997. It currently provides 68 terminals throughout the system that are accessible to the public (and maintains 299 terminals that provide Internet access in total). The library estimates that the terminals are in constant use and that approximately 68,000 patrons per week use the terminals for Internet access.

157. Among the most frequent users of the Internet access terminals are people who appear to be homeless and people who are elderly.

158. The Santa Cruz Public Library provides new Internet users with an online set of tutorials and other information about search strategies. The

Library maintains its own web site, and has a Savvy Search page that instructs patrons in search methods and teaches them to be skeptical of the results.

The Santa Cruz Public Library also offers a “Kids Page” which is a link of sites of interest to children.

159. The Library does not offer or provide blocking software. As a matter of locally approved policy, the library “does not deny access to materials in any collection, or to any library service, on the basis of age. The Library does not act in loco parentis; it does not take the place of parents in deciding what their children may read or view.”

160. The Santa Cruz Public Library currently has a \$22,000 LSTA grant to be used for adding the county law library catalogue and system to the library’s catalogue and system. When that process is completed, patrons of the county law library will access the Internet through the Santa Cruz Public Library system.

161. The Santa Cruz Public Library also participates in the e-rate program, and was authorized to receive \$75,000 per year for the first few years and approximately \$150,000 last year. The Santa Cruz e-rate discount is based on over 5000 students out of approximately 24,000 who are eligible for free or reduced school lunches. The library has begun the e-rate application process for 2001-02.

South Central Library System (SCLS)

162. Plaintiff South Central Library System (SCLS) provides services to fifty independent member public libraries in central and southern Wisconsin. SCLS member libraries together serve approximately 93,000 library patrons each week, in municipalities ranging in size from North Freedom, Wisconsin, with a population of 604, to Madison, Wisconsin, with approximately 200,000 people. SCLS serves a predominantly rural and agricultural region which includes Adams County, the second poorest county in Wisconsin.

163. SCLS provides a cluster of services to member libraries, including automation planning, consultation and delivery. SCLS runs an automated circulation and resource sharing system which provides, among other services, full Internet access to approximately 200 terminals located in 38 member libraries. There are approximately 100 additional Internet access stations at SCLS member libraries that do not go through the central service. Internet access stations throughout the SCLS are in nearly constant use by library patrons during the member libraries' hours of operation.

164. The ability of library patrons to obtain Internet access through SCLS member libraries has done much to bridge the digital divide. SCLS serves a significant population who live at or near the poverty level, and who typically have no Internet access at home. Many SCLS patrons must rely on their local library for meaningful Internet access, because high speed Internet access is unavailable in rural Wisconsin. Such access is particularly critical in areas where direct services are limited or non-existent. For example, many

Wisconsin dairy farmers rely on the Internet to access government regulations that affect their businesses, to research agricultural issues, and to purchase equipment.

165. SCLS member libraries offer Internet education classes that include training on Internet search techniques, host home pages that direct patrons to useful and age-appropriate sites, and have special web pages for children which point parents to Internet safety resources.

166. SCLS has applied for and received the e-rate discount on behalf of its member libraries since 1998, collecting between \$35,000 and \$98,000 per year for phone and Internet access. Based on the number of low income people in its communities, SCLS and its members have been entitled to e-rate discounts ranging from 48% – 90%. SCLS has begun the application process to receive the e-rate discount in 2001-02.

167. SCLS has also applied for and received LSTA funding for Internet access and automation. In 2000, SCLS received \$89,790 in LSTA funds.

Westchester Library System (WLS)

168. Plaintiff Westchester Library System (WLS) is a cooperative library system providing services to all 38 public libraries in Westchester County. In 1999, library patrons made over five million visits to the member libraries of WLS.

169. WLS provides operational and managerial support for WESTLYNX, which contains the County's online library catalog, circulation and

database, and is the gateway for librarians, staff, and library patrons to access the Internet. There are 661 total Internet access terminals in the Westchester Library System, with 343 computers reserved for free public use.

170. WLS is committed to helping library patrons access the information they seek without encountering objectionable content. The WLS home page directs children to a special web site "Just for Kids," which begins with a link about child safety on the Internet. WLS also provides support for member libraries to offer Internet classes. Some WLS member libraries and WLS itself have Internet usage policies which guide library patrons.

171. The WLS web site, including the pages for children, are available in Spanish to better serve Spanish-speaking residents of Westchester County.

172. In 2000-01, WLS received \$27,800 in LSTA funds for a project entitled "El Tiblon Electronico," a web page entirely in Spanish for new Spanish-speaking residents of Westchester County to obtain community information on schools, health care and housing. In past years WLS has received over \$20,000 per year in LSTA funds used for Internet purposes.

173. Since 1999, WLS has received approximately \$140,000 per year through the e-rate program on behalf of its member libraries.

Wisconsin Library Association (WLA)

174. Plaintiff Wisconsin Library Association (WLA) is a voluntary organization that serves approximately 2000 members who are libraries, librarians, library staff and friends of the library.

175. WLA is committed to maintaining intellectual freedom, access to information and privacy in the use of library materials and services. It has adopted a policy statement that reads in part, "It is WLA's position that local governing bodies of educational agencies, such as schools and libraries, are in the best position to determine policies for Internet access." In order to promote full and fair access to all library services, "WLA strongly opposes any legislation that mandates the use of Internet [blocking] software, especially when it is used as a requirement for receiving federal, state, and/or local funds." Instead, WLA encourages Wisconsin libraries to adopt Internet Use Policies as a way to promote effective and efficient Internet use by all patrons of Wisconsin libraries without governmental censorship.

176. Many WLA member libraries are covered by CHIPA, including the Middleton Public Library in Dane County, Wisconsin, which serves approximately 7,500 library patrons each week. The Middleton Public Library maintains four public and six staff computers that provide free access to the Internet to over 350 people each week. Library staff also use the Internet extensively to answer reference questions and to provide instruction to patrons.

177. The Middleton Public Library has created and maintains its own homepage for access to library resources for its patrons and others. It also offers suggestions and guidelines for Internet users, including search suggestions with tips for effective research, and a policy outlining the "Responsibility of Users" of the Internet.

178. The Middleton Public Library has not installed blocking software on any of the ten computers in the library.

179. The Middleton Public Library receives the e-rate discount and LSTA funding through its membership in the South Central Library System.

The Impact of CHIPA on the Library Patron Plaintiffs

180. Plaintiffs who are library patrons ("the patron plaintiffs") regularly use and depend on the wide range of information and resources provided for free at their local public libraries. They all have accessed and will continue to access the Internet at their public libraries, all of which are covered by CHIPA because they currently receive the e-rate discount, LSTA funds, or both. By requiring their libraries to install technology protection measures, CHIPA will prevent the patron plaintiffs from accessing the complete range of constitutionally protected speech available on the Internet.

181. Many of the patron plaintiffs depend on local public libraries as their only method of using the Internet; restricting the information they access from the library therefore prevents them from receiving that information at all.

182. CHIPA will also deprive the patron plaintiffs of the ability to choose for themselves and their families what constitutionally protected information they can access on the Internet in public libraries.

183. CHIPA will also unconstitutionally deter the patron plaintiffs and other library patrons from accessing constitutionally protected speech.

Although CHIPA provides that technology protection measures may be disabled for some patrons who show a “bona fide research purpose,” most patrons will be unwilling or unable to ask for such permission. The patron plaintiffs do not understand what a “bona fide research purpose” means, and are unclear as to whether the information they access would be covered by the exception. The patron plaintiffs may also be deterred from asking a librarian to unblock a site because the sites contain sensitive, controversial or personal information that would be awkward to reveal to a stranger; because of the stigma and burden of asking for access to a site that is blocked; because of the discomfiture of having to justify why they need access to the site for a “bona fide research purpose;” because an administrator wrongly refuses to unblock the site; or because they need the information immediately.

184. CHIPA will also unconstitutionally burden the patron plaintiffs' exercise of their rights under the First Amendment by conditioning their exercise of those rights on the surrender of their privacy when attempting to access constitutionally protected speech. Under the "bona fide research" provision, the patron plaintiffs would be required to identify to a librarian or administrator the material they are seeking to access when such material is blocked by technology protection measures. That requirement would compel them to sacrifice the privacy they would otherwise enjoy when accessing constitutionally protected speech.

185. The library patrons who are minors understand that CHIPA does

not allow libraries that receive e-rate funds to disable the technology protection measure for minors under any circumstances. Even if they are certain that a web site contains protected speech, CHIPA will thus prevent them from accessing it.

Mark D. Brown

186. Plaintiff Mark D. Brown has lived in Royersford, Pennsylvania for eight years and has used the Free Library of Philadelphia for two years. Over the past twenty years, he has also regularly used other public libraries in Pennsylvania, including the Chester County Public Library and the Montgomery County Public Library. Mr. Brown currently works as a full time volunteer for the American Friends Service Committee. He uses the Internet at the Free Library of Philadelphia approximately once a month. His Internet access from home is unreliable, which is why he depends on the Free Library of Philadelphia.

187. Most recently, Mr. Brown has used the Internet at the Free Library of Philadelphia to research health education issues. His mother underwent reconstructive breast surgery after numerous lumpectomies thirty years ago. He has been worried that his mother's current health problems are a result of that surgery. Mr. Brown has been able to study medical and other health-related documents to which he would not otherwise have access, by conducting research from the free Internet access stations at his local library. He feels certain that because blocking programs are arbitrary and prone to error, he will be denied access to many web sites that contain important

information. He is concerned that many web sites he has accessed, some of which contained detailed pictures of breasts before and after reconstruction, would be blocked because of CHIPA.

Sherron Dixon, By Her Father and Next Friend Gordon Dixon

188. Plaintiff Sherron Dixon is a sixteen-year-old who lives in Philadelphia, Pennsylvania and is a junior at Mathematics Civics and Sciences Charter School in Philadelphia. She has been a patron of the West Oak Lane Branch of the Philadelphia Free Library for the last eight years.

189. Ms. Dixon does not have a computer at home. She currently browses or conducts research at the West Oak Lane Library at least once a week and uses the Internet at the library at least once every two weeks. Ms. Dixon uses the Yahoo! search engine to do various Internet research. She uses the Internet primarily in response to school assignments. Recently, she has researched issues relating to sexually transmitted diseases and breast cancer.

190. CHIPA will prevent Ms. Dixon from accessing sites needed for her schoolwork. She does not want her grades to suffer solely because she is prevented from accessing the full range of information that other students are able to read.

James Geringer

191. Plaintiff James Geringer has lived in Portland, Oregon and used the Multnomah County Public Library since 1994. Since at least 1997, he has

also used the library with his two children, including in particular the Central Library in downtown Portland.

192. Mr. Geringer works as a full-time attorney with Klarquist Sparkman Campbell Leigh & Whinston, LLP. Although he has Internet access at home and at work, he also uses the Internet at the Central Library, where the connection is generally faster than at his home, and the proximity to related materials (such as books and periodicals) is greater.

193. Most recently, Mr. Geringer has used the Internet at the Central Library to research steganography, encryption, computer security, censorship, copyright infringement and fair use, and the “anti-trafficking” and “anti-circumvention” provisions of such statutes as the Audio Home Recording Act and the Digital Millennium Computer Act. Because blocking programs are arbitrary and prone to error, CHIPA will deny him access to a significant number of web sites that contain important information and opinion. He is concerned that some web sites he has accessed containing such information and opinions are particularly likely to be blocked because of CHIPA.

194. Mr. Geringer takes his children to the library approximately every month or two. While there, his children often use the library’s computers. His second-grade son, in particular, has used the Internet at the library to research topics in connection with his work in school, as well as such other topics as art, music, Japanese society, and Japanese-American history. CHIPA will prevent minors from obtaining access to blocked sites at his library under any

circumstances, even if the sites are (or appear likely to be) valuable to them. In such instances CHIPA will thus decide in the place of Mr. Geringer and his wife what is appropriate Internet access for his children. Mr. Geringer also objects to the appointment of official censors in public libraries.

Marnique Tynesha Overby, By Her Next Friend Carolyn C. Williams

195. Plaintiff Marnique Tynesha Overby is a fifteen-year-old freshman at Overbrook High School in Philadelphia, Pennsylvania. She has used the public libraries in Philadelphia for about eight years, and currently uses the Internet at the West Philadelphia Regional Branch of the Free Library of Philadelphia approximately every two weeks.

196. Ms. Overby uses the Internet at the West Philadelphia Library primarily for school projects and homework assignments. She has spent hours learning about Black History, looking up web sites with information that ranges from biographies on Martin Luther King and Harriet Tubman, to the goals and undertakings of the Southern Christian Leadership Conference and the NAACP. She has researched more general subjects within history and found Langston Hughes poetry for her English class through the Yahoo! search engine.

197. Ms. Overby does not have Internet access from home. Her only means of accessing the full variety of resources available on the Internet is through the free Internet access provided to all library patrons at the West Philadelphia Library. Because CHIPA will force the Library to install a

technology protection measure that blocks access to protected speech, Ms. Overby will be denied her only method of accessing this information.

Emmalyn Rood, By Her Next Friend Joanna Rood

198. Plaintiff Emmalyn Rood Patron is fifteen years old and lives in Portland, Oregon, where she has used the Multnomah County Library regularly since she was four years old.

199. Ms. Rood uses the Internet access terminals at her local library to access a variety of sites related to her interests. Within the last two years, she began conducting research at the Multnomah County Library in order to explore her sexual orientation after thinking she might be a lesbian. Although her family has Internet access at home, she did not want to perform this sensitive and personal research from her family computer, for fear her mother would discover her private research. She took the bus downtown approximately twice a week in order to access the Multnomah County Library's Internet services. She used books, web sites (including the web site of plaintiff PlanetOut), and interactive Internet resources such as e-mail. Through these resources and others, Ms. Rood was able to learn more about her sexual orientation, and connect with a friendly, welcoming queer community online. Due to the information and support she received, Ms. Rood has since come out as a lesbian to her family and community.

200. Ms. Rood continues to use the Internet at her local library when access at home is down or slow, when others are using the computer at home

or when it is more convenient. She believes that her ongoing interests in gay and lesbian resources on the Internet are examples of web sites that will be blocked by the technology protection measures that CHIPA will force the Multnomah County Library to install.

William J. Rosenbaum

201. Plaintiff William J. Rosenbaum has lived in Winthrop, Maine for the past twenty-two years, where he is a regular patron of the Bailey Public Library. He currently visits the Bailey Public Library two to three times per week and accesses the Internet each time. Mr. Rosenbaum occasionally accompanies his thirteen-year-old and fifteen-year-old daughters to the library. He is employed as a hearing officer for the Maine Department of Human Services.

202. Mr. Rosenbaum conducts a variety of searches on the Internet at the Bailey Public Library. Most recently, he has researched heart disease and heart healthy recipes, and has read online news articles about protecting children on the Internet. He also has done general research on genealogy. In addition, he has helped his daughters conduct Internet research for school projects.

203. As a result of CHIPA, Mr. Rosenbaum will be unable to identify sources of information, including legal cases and statutes, and converse with friends through online bulletin boards on the Internet if particular language is proscribed. As a Quaker, he is disturbed that blocking programs might bar him

from contacting web sites related to his faith. He does not want his access to valuable speech to be blocked by unreliable blocking programs.

204. Because CHIPA will prevent minors from obtaining access to blocked sites at the library under any circumstances, even if the sites are valuable to them, CHIPA will prevent Mr. Rosenbaum from making his own decisions about appropriate Internet access for his children.

Carolyn C. Williams

205. Plaintiff Carolyn C. Williams has lived in Philadelphia, Pennsylvania for over thirty years. She has been a library patron in the Philadelphia public libraries for most of this time. Currently, Ms. Williams uses the Passyunk Branch of the Free Library of Philadelphia, where she accesses the Internet approximately twice a month. Most of her research on the Internet is to help her grandchildren on education-related assignments.

206. Ms. Williams does not have Internet access from home. The Passyunk Library provides the only available means of accessing the Internet to help her grandchildren with their school assignments. These school assignments and the resulting Internet research ranges from history projects about the Middle Ages, to science projects on how to grow mold.

207. Because CHIPA will prevent minors from obtaining access to blocked sites at the library under any circumstances, even if the sites are valuable to them, CHIPA will prevent Ms. Williams from making her own decisions about appropriate Internet access for her grandchildren.

Quiana Williams, By Her Mother and Next Friend Sharon Bernard

208. Plaintiff Quiana Williams is fifteen years old and lives in Philadelphia, Pennsylvania, where she attends Mathematics Civics and Sciences Charter School. She uses the Cobbs Creek Branch of the Philadelphia Free Library approximately once a week and uses the Internet every time she is there.

209. In response to assignments from school, she has recently done Internet searches for information on sexually transmitted diseases, breast cancer and prostate cancer.

210. Ms. Williams does not own a computer or have access to a computer at home. She is concerned that CHIPA will thwart her ability to most effectively complete her schoolwork. She does not want her grades to suffer solely because she is prevented from accessing the full range of information that other students are able to read.

The Impact of CHIPA on the Web Site Plaintiffs and Their Readers

211. Plaintiffs who are authors and publishers of speech on the Internet ("the web site plaintiffs") want the widest possible audience and readership for their online speech. They want to be able to communicate their free information to interested people who obtain Internet access at public libraries, some of whom may not have Internet access at home or at work.

212. The speech of the web site plaintiffs is currently blocked by one or more of the leading commercial blocking programs.

213. None of the web site plaintiffs provides speech that is obscene or otherwise constitutionally unprotected. The web site plaintiffs believe that their speech has educational, political, literary, artistic and social value for both adults and minors.

214. As a direct result of CHIPA, public libraries will be forced to use blocking programs that will prevent library patrons from obtaining the speech of the web site plaintiffs.

215. Some of the technology protection measures required by CHIPA are designed and constructed in a manner that discriminates on the basis of viewpoint. For example, some blocking programs block viewpoints expressed by the web site plaintiffs that encourage safer sex practices and reproductive freedom, and that support gay and lesbian youth, but do not block sites opposing homosexuality and promoting abstinence rather than safer sex practices. Because the vast majority of blocking programs keep their list of blocked sites secret, the web site plaintiffs will have no way to ensure that the programs mandated by CHIPA are not discriminating on the basis of viewpoint.

216. The web site plaintiffs reasonably fear that their web sites will continue to be blocked at libraries subject to CHIPA throughout the United States. First, their web sites are presently blocked by blocking programs. Second, the content on their web sites changes constantly, and they

reasonably fear that their new but similar content, which may be located at different web addresses, will be blocked.

217. Many of the web site plaintiffs are either non-profit organizations or individuals who maintain free web sites in their spare time. They lack the time and money required to constantly monitor the blocking or unblocking of their sites from a variety of different products that CHIPA will force thousands of libraries around the country to use, or to seek corrective action.

218. Many of the web site plaintiffs provide information that is sensitive, highly personal, or controversial. Some people may prefer to access their web sites from public libraries in order to reduce the possibility that their online research may be tracked to them personally and to obtain privacy and anonymity that they may not have when accessing the Internet at home.

219. Although CHIPA provides a "bona fide research exception" for some library patrons, patrons who want to access the sites of the web site plaintiffs will be deterred by this requirement because the information is sensitive, personal, or controversial, or because they are unwilling to ask permission for access to protected speech. Because CHIPA does not allow minors at libraries which receive the e-rate to obtain access to blocked information under any circumstances, CHIPA will prevent minors from obtaining access to valuable information specifically targeted by the web site plaintiffs to minors.

220. If public libraries around the country are forced to use blocking programs, the web site plaintiffs may be forced to self-censor in order to avoid being blocked in public libraries, at the cost of diminishing their communicative value.

AfraidToAsk.com, Inc.

221. Plaintiff AfraidToAsk.com provides information through its web site about highly personal health care issues, such as sexually transmitted diseases, depression, chronic disease, and erectile dysfunction. AfraidToAsk.com also maintains a “Bulletin Board” area on its web site, where users share information on personal health care issues.

222. AfraidToAsk.com also offers a service referred to as “Ask The Doc,” a pay-per-use service that allows users to pose questions to a board-certified American physician. Although expressly disclaiming that it is not providing medical advice or treatment (which would require a face to face examination), this aspect of AfraidToAsk.com seeks to ensure that users have access to information about any personal medical issue.

223. The information and discussions on AfraidToAsk.com are by their nature frank, and include explicit language and pictures. AfraidToAsk.com believes that explicitness, both textual and visual, is necessary to its mission to provide comprehensive information about the topics it covers. Visual depictions are crucial to an individual’s full understanding of bodily development, functions, problems, and infections.

224. AfraidToAsk.com believes that many individuals who use the site are adolescents who are either too embarrassed or afraid to discuss issues about their bodies or about sexual activity with their parents. In addition, many parents who are uncomfortable discussing such matters with their children have been relieved to be able to point their children to AfraidToAsk.com for answers to their questions.

The Alan Guttmacher Institute

225. The Alan Guttmacher Institute ("AGI") has a web site which contains information about its activities and objectives including its mission to protect the reproductive choices of all women and men in the United States and around the world.

226. AGI provides on its web site information about its organization and its program to inform individual decision-making, encourage scientific inquiry, enlighten public debate and promote the formation of sound public and private sector programs and policies. AGI's site also contains research articles and analyses providing balanced, nonpartisan information on sexual activity, contraception, abortion and childbearing.

227. AGI believes that both adults and teenagers are an important audience for the resources offered through AGI's web site. Many teenagers are sexually active, consider becoming sexually active before they reach adulthood, are or could become pregnant, or are afflicted with or could contract or transmit a sexually transmitted disease including HIV. Denying minors access to the

information on AGI's site could cost lives and lead to unnecessary unintended pregnancies, abortions, births and sexually transmitted diseases including HIV. Even those who would choose to abstain from sexual intercourse would be denied related information.

Ethan Interactive, Inc. d/b/a Out In America

228. Plaintiff Ethan Interactive, Inc., d/b/a Out In America ("OutInAmerica") is a leading online content provider that owns and operates 64 free web sites for gay, lesbian, bisexual and transgendered persons worldwide. OutInAmerica is accessed by over 850,000 visitors each month.

229. OutInAmerica's national web site primarily provides chat room services including private chats and structured chats on a variety of topics including bisexual support and the difficulties of being out to one's family

230. On its web sites targeted to specific cities, OutInAmerica provides chat rooms, news, travel, entertainment and health information.

231. OutInAmerica believes that its services are of great interest to both minors and adults. Gay and lesbian teenagers, many of whom are experiencing intense feelings of isolation and loneliness, have few, if any, contacts with the gay and lesbian community if not for the Internet and web sites like those provided by OutInAmerica.

The Naturist Action Committee

232. Plaintiff the Naturist Action Committee (NAC) is the nonprofit political arm of The Naturist Society, a private organization with 27,000

members that promotes a way of life in harmony with nature, characterized by the practice of nudity, with the intention of encouraging body acceptance, self-respect, respect for others and respect for the environment.

233. The NAC web site provides information about The Naturist Society activities, and about state and local laws that may affect the rights of Naturists or their ability to practice Naturism. Some of the sections of the NAC web site include photographs of its members practicing Naturism (*i.e.*, being nude). Because being nude is fundamental to the beliefs underlying Naturism, to which the NAC's members and constituents adhere, such photographs are essential to the NAC's ability to present itself, its mission, and information about Naturism.

Wayne L. Parker

234. Plaintiff Wayne L. Parker was the Libertarian candidate in the 2000 U.S. Congressional election for the Fifth District of Mississippi and is the current Vice Chair of the Libertarian Party of Mississippi. He publishes a web site that communicated information about his campaign, and that provides information about his political views and the Libertarian Party to the public. He intends to run for Congress again in the future.

235. In addition to presenting his campaign platform and biography, Mr. Parker's web site includes his commentary about various political issues, including statements entitled "Elian Gonzalez: A Picture Speaks A Thousand Words," "The Holocaust: More Than Just Racism," "Government Monopoly

Over Education," and "Civil Rights: Confusing Means With Ends," among others. The site also includes a listing of quotes and web links that are related to Mr. Parker's libertarian beliefs.

236. Given the very limited budget on which he ran his campaign, Mr. Parker believes that his web site is crucial to communicating his views and the issues to his constituents and the public at large. The mandatory use of blocking programs hampers democratic discourse and the dissemination of Mr. Parker's Libertarian message to his constituents (particularly those who may be unable to afford computers or personal Internet access), and will cost him precious votes.

Planned Parenthood Federation of America, Inc.

237. Planned Parenthood Federation of America, Inc. ("Planned Parenthood") operates a web site that provides a broad range of information about all facets of reproductive health, from contraception to prevention of sexually transmitted diseases, to finding an abortion provider, to information about the drug mifepristone. Over 660,000 visitors access Planned Parenthood's web sites each month.

238. Planned Parenthood's web site is intended to be accessible to minors who seek it. It includes illustrations of how to place a condom on a penis, and of male and female genitalia. It frequently employs vernacular terminology, such as "cum" referring to semen or ejaculation.

239. Planned Parenthood's web site also provides an e-mail service. Through this service, users can address questions to Planned Parenthood on subjects such as abortion, contraception, prevention of sexually transmitted diseases, and sexuality, and Planned Parenthood responds with complete information.

240. The information provided on the Planned Parenthood web site is critical for both minors and adults. Many teenagers are sexually active, are considering becoming sexually active, or are pregnant. Access to this information could save lives, avoid sexually transmitted diseases, and decrease unwanted pregnancies.

PlanetOut Corporation

241. Plaintiff PlanetOut Corporation ("PlanetOut") is a leading online content provider for gay, lesbian, bisexual and transgendered persons worldwide. Over 500,000 visitors access PlanetOut each month.

242. PlanetOut provides on its web site a variety of information and services of interest to the gay, lesbian, bisexual and transgendered community. For example, PlanetOut provides national and international news, including stories written by its own correspondents, and information regarding travel, finance, shopping, and entertainment. PlanetOut also offers an online radio show hosted by sex adviser Malcolm McKay on topics such as "Difficulties Using Condoms," chat rooms such as "The Steam Room," and discussion

groups such as "Lesbian Libido" in which frank sexual exchanges may be involved.

243. Minors as well as adults are interested in PlanetOut's online information. PlanetOut's mission includes providing an online community for gay and lesbian teenagers, many of whom are undergoing intense feelings of isolation and loneliness and would have no other source of contact with the gay and lesbian community were it not for the Internet.

Jeffery Pollock

244. Plaintiff Jeffery Pollock was the Republican candidate in the 2000 U.S. Congressional election for the Third District of Oregon and has begun campaign preparations for the 2002 election.

245. A critical part of Mr. Pollock's campaign efforts has and continues to be his web site, which presents his campaign platform, issue statements, and information about his opponent's voting record. In Mr. Pollock's opinion, the ability to present political views over the Internet is perhaps the most important advance in political and democratic discourse since the advent of the printing press.

246. One of the past issue statements posted on Mr. Pollock's web site supported mandatory blocking of Internet content at libraries in order to protect unsupervised children from randomly accessing pornography and certain other categories of content. After Mr. Pollock's web site was blocked by CyberPatrol, one of the blocking programs he had been advocating, Mr. Pollock

researched these programs and learned that under-blocking and over-blocking were significant and inherent problems with blocking programs. As a result, Mr. Pollock now opposes mandatory use of blocking programs in libraries because of their ineffectiveness and tendency to arbitrarily suppress the exercise of free expression.

Safersex.org

247. Plaintiff Safersex.org is a web site that offers free educational information on how to practice safer sex. Safersex.org includes the equivalent of approximately one hundred printed pages of information and is accessed by more than 20,000 people around the world every week.

248. Safersex.org publishes information about safer sex, HIV and other sexually transmitted diseases, condoms, and unwanted pregnancy. The information, which includes graphics, audio, and video, is indexed to facilitate research and retrieval.

249. By its very nature, information and discussions about safer sex include explicit language and pictures. Postings include guidelines about the risks associated with different sexual acts. The public health threat of unsafe sex demands that people know with specificity how to protect themselves.

250. Safersex.org considers teenagers to be an important audience for its resources. Many teenagers are sexually active, or consider becoming sexually active before they reach adulthood. With the rate of HIV transmission

among teenagers increasing dramatically, the consequences of denying minors access to such information could very well cost lives.

Causes of Action

251. Plaintiffs incorporate by reference paragraphs 1 - 250 above.

252. CHIPA violates the First Amendment to the United States Constitution because it prevents plaintiffs from communicating and accessing constitutionally protected speech.

253. CHIPA imposes a prior restraint in violation of the First Amendment and the Due Process Clause of the Fifth Amendment because it provides for and induces suppression of speech without any judicial determination that the speech is unprotected by law.

254. CHIPA violates the First Amendment to the United States Constitution because it imposes an impossible and unconstitutional condition on libraries that participate in federal programs.

255. CHIPA is unconstitutionally overbroad, in violation of the First Amendment to the United States Constitution, because it blocks constitutionally protected communications between adults, and because it blocks far more constitutionally protected expression to minors than possibly could be justified by any governmental interest.

256. CHIPA is a content- and viewpoint-based restriction upon speech that fails the strict scrutiny required under the First Amendment.

257. CHIPA fails to advance a compelling governmental interest, and is not narrowly tailored because it results in the blocking of protected speech, because it fails to protect against access to much prohibited speech, and because it is not the least restrictive means of achieving any compelling government interest.

258. CHIPA violates the First Amendment and the Due Process Clause of the Fifth Amendment because it imposes an arbitrary and standardless permission requirement on adults who seek access to protected speech.

259. CHIPA violates the First Amendment right to communicate anonymously and privately because it requires adults to prove to government officials that they have a "bona fide research purpose" before accessing protected speech.

260. CHIPA violates the First Amendment and the Due Process Clause of the Fifth Amendment because it is vague.

Prayer for Relief

WHEREFORE, plaintiffs respectfully request that the Court:

A. Declare that Sections 1712 and 1721(b) of the Children's Internet Protection Act, to be codified at 20 U.S.C. §9134 and 47 U.S.C. §254(h), on their face and as applied to plaintiffs, violates the First and Fifth Amendments of the United States Constitution;

B. Permanently enjoin defendants from enforcing Sections 1712 and 1721(b) of the Children's Internet Protection Act;

C. Award plaintiffs such costs and fees as are allowed by law pursuant to 28 U.S.C. §2412; and

D. Grant plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,

Ann Beeson
Christopher A. Hansen
Meera E. Deo
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 St., Suite 701
Philadelphia, PA 19107
(215) 592-1513 ext. 216

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

David L. Sobel
Electronic Privacy Information Center
1718 Connecticut Ave., Suite 200
Washington, DC 20009
(202) 483-1140

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

ATTORNEYS FOR ALL PLAINTIFFS

Thomas Sponsler, County Attorney
Multnomah County
501 NE Hawthorne Blvd, Suite 500
Portland, Oregon 97214
(503) 988-3138

ATTORNEY FOR
MULTNOMAH COUNTY PUBLIC LIBRARY