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- - -

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MR. ENNIS: Judge Sloviter, my name is Bruce Ennis. I'm counsel for the ALA plaintiffs. We wish to call as our second witness Ann Duvall, the president of Surfwatch Software, Incorporated.

Before I do that, may I take care of one brief housekeeping matter? I'd like to move into evidence the plaintiffs' exhibits, which was filed a few days ago, and to which the Government did not object. That would be the ACLU Exhibit Numbers 1 through 67, and the ALA plaintiff Exhibit Numbers 200 through 289.

MR. COPPOLINO: No objection.

JUDGE SLOVITER: Okay.

MR. ENNIS: We call --

JUDGE SLOVITER: Accepted.

MR. ENNIS: Thank you, your Honor.

(Whereupon ACLU Exhibit Numbers 1 through 67 and ALA Plaintiff Exhibit Numbers 200 through 289 were admitted into evidence.)

JUDGE SLOVITER: We call Ann Duvall.

THE CLERK: Would you please state and spell your name for the record?

THE WITNESS: Ann Duvall, A-N-N, D-U-V-A-L-L.

ANN DUVALL, Sworn.

THE CLERK: Thank you. Please be seated.

JUDGE SLOVITER: Does the Government concede the expertise of this witness?

JUDGE DALZELL: In the area she's proffered for.

MR. COPPOLINO: We conceded only in the area that she is proffered for. I do expect to have some questions with respect to technical issues that would clarify the matter.

JUDGE DALZELL: Sure.

MR. COPPOLINO: Thank you.

MR. ENNIS: Your Honors, at this point, I would move the admission into evidence of the declaration of Ann Duvall, previously filed. It was sworn to on March 19th of this year, as her trial testimony.

MR. COPPOLINO: No objection.

JUDGE SLOVITER: Okay. It is accepted.

(Whereupon the declaration of Ann Duvall was admitted into evidence.)

JUDGE SLOVITER: Are we on mike?

JUDGE DALZELL: Yeah. You can hear us, can't you?

ALL: Yes.

JUDGE SLOVITER: Well, we can be heard anyway.

MR. ENNIS: As the Court is aware, Mrs. Duvall is going to demonstrate for the Court some uses of the computer in an interactive computer system.

Briefly, she is going to demonstrate how you can access the Internet and move around in the Internet. And then she is going to demonstrate how parents can use software technology, which would make it possible for parents to view whatever they want on the Internet, and yet for parents to block or filter material they consider inappropriate for their children.

JUDGE SLOVITER: Okay. That's at least a thesis on which she's going to testify.

MR. ENNIS: That's the objective, your Honor.

JUDGE SLOVITER: Yeah.

MR. ENNIS: She -- the testimony will take approximately 30 minutes, and I wish to emphasize that because the point of the demonstration is to explain how this works, if there are any questions from the Court at any point, please feel free to interrupt and ask.

JUDGE SLOVITER: I think the Court is not bashful.

(Laughter)

MR. ENNIS: Thank you, your Honor.

JUDGE DALZELL: As you may have detected. Did you want the lights down?

MR. ENNIS: Yes. Your screens would flicker less if we turn off just the fluorescent lights.

JUDGE DALZELL: Okay. I think that's about to take place.

JUDGE SLOVITER: Now, does counsel have -- oh, you have it up there?

MR. ENNIS: Yes. I don't have a monitor, and I might need at some point, to approach the witness, if that would be acceptable.

JUDGE SLOVITER: If it's all right with the witness, it's all right with the Court.

THE WITNESS: Good afternoon, your Honors.

JUDGE DALZELL: Good afternoon.

THE WITNESS: I'd like to take and spend some time with you exploring a little of the Internet, and putting in front of you, something

you can see that will perhaps explain some of the very technical explanations that you saw this morning.

JUDGE SLOVITER: Uh-huh.

THE WITNESS: I'm going to start at a very basic level, so if I'm repeating things that you already know, please forgive me. But please feel free to ask questions, if you have any, along the way.

Before a parent can connect to the Internet, they have to purchase a computer. That's the first place that a parent makes a decision about whether or not they want their child to see things on the Internet.

The computer I'm going to be using this afternoon is a MacIntosh computer. It actually -- the actual computer is sitting right there on the floor, inside the little box there. And -- I can point to that? Right. It's inside the little box.

That is actually a portable computer. And when I leave this computer, I can actually remove the whole computer from this set up, so that the child wouldn't have any access at all to the computer, if that's how I chose to set up my home with this portable computer. So it's another way I can make a decision to choose what my child sees on the Internet.

Many computers have keys and locks that you actually can use to lock up a computer. Before you can actually turn it on, you have to have a key to open it. And so that's another parental control that you can use when you're using a computer.

Now I'm going to go ahead and turn my computer on by pushing one button over here, and as it's starting to get warmed up, another means that I have used often is to have a private password when my computer starts up. It's a password that I know, that I have to type in, in order for this computer to begin and to actually boot up as they call it.

So as we're waiting for this to start, you will see that a screen will come on, and I want to make sure you all have a blank white screen right now?

JUDGE DALZELL: Yes. Yes.

THE WITNESS: Okay. It says, Welcome to MacIntosh? Okay.

JUDGE DALZELL: At least two members of the panel are MacIntosh friendly.

THE WITNESS: Oh. Good.

JUDGE SLOVITER: I can't say I'm friendly. I'm there.

THE WITNESS: So as this computer begins to start, there will come a point where it will stop, actually starting, and ask me for my private password, which I need to type in from my keyboard, which is right now. So I type that word in, and then it will continue to load.

Once the parents -- just because a parent has bought a computer, doesn't necessarily mean they're connected to the Internet automatically. You can buy computers to do word processing, or whatever. But in order to connect to the Internet, you must purchase additional hardware and software. You probably have to buy a modem that will allow you actually to make that connection to the Internet.

Once you've bought the modem, then you need to find your ISP, which Mr. Bradner mentioned this morning, your Internet Service Provider, which is the person who will provide that connectivity to the Internet.

Most homes use modems. I happen to be connected here, this afternoon, with a special line that was brought into the courthouse, called a T1 line. That's a kind of a line that a lot of businesses tend to use today. But in most homes, they use modems and what's called a dial up connection.

Once I've established my modem and my connection, I still need some software that will allow me to view the Internet and to connect to the Internet, software that Mr. Bradner mentioned this morning.

I'm going to take a little tour right now of the Worldwide Web, which is one section of the Internet. It's the most popular, fastest growing, the one I think that children use the most often today.

In order to see the Worldwide Web, I need what's called a browser, which we talked about quite a bit this morning. I have a choice of many different browsers, one of which is Spy Glass Mosaic, the other which is Netscape browser.

I'm going to use Netscape this morning. And the way I start it up is I move my mouse to the center of the application. By double clicking, it will

JUDGE SLOVITER: Could I stop you here? Do you have to buy these browsers, or does one ordinarily have to buy these browsers in order to install them?

THE WITNESS: Many times when you actually go to an Internet Service Provider, they will, as part of the package, provide you with a browser. But most of the browsers have been available, free. What happens in the future is somewhat difficult to determine. But now, you can get most of them free over the Internet.

So I am now connected to the Internet. And when you first start up a browser, you go to what's called your home page. And each person can have their own individual home page. My home page happens to be the home page for the company Surfwatch, which gives you information about our company. This piece of information is actually located on a computer in California, on what's called our server. But I actually can view this information here, in Philadelphia.

At the same time I'm viewing this information, thousands of people could also be viewing the same piece of information on their computers in their homes or their offices.

The -- this is the Netscape area that we're looking at. And what you're looking at up top on this bar -- does my mouse move back and forth on your screen also?

JUDGE DALZELL: Yes, it does.

THE WITNESS: Okay.

JUDGE DALZELL: Very clear.

THE WITNESS: Are some commands that I perhaps may be using later on. But this bar down below is really a fun place to go to. It always gives you access to What's New and What's Cool, according to Netscape on the Internet. So let's go -- the way I can go there is just by clicking in the what's cool area, and depending on how quickly that connection will take us there, we will go to the area that's called What's Cool.

On the What's Cool page, and I'm going to move the page up a little bit, it tells me it was last updated on March 16th, so it's something that's constantly changing. If I move up a little bit, you can see all sorts of short pieces of description of various places that might have information I was interested in.

And if you notice that the cursor, which is now an arrow, when I bring it over one of the blue lettered items, it turns into a little hand. That means that I can click on that and go to another location and get that information. And I will do that in a minute and show you how that works.

One of the ways that you can find information on the Internet is to know the address, to actually know ahead of time what the location is, where you want to go.

Before I came here, I did a little research on Philadelphia, and I found out the location of a page with information on Philadelphia. So if I choose to go there, I go up under the file menu, select open location, then I type in the address. And again, now is the case where I'd have to use those letters that we learned about this morning, HTTP:\\WWW.Phila.Com. And

that's the address of the location I've known about ahead of time. So I say I'm ready, let's go there.

What I get welcomed to is Philadelphia's Newest Web Site, the Key to the City. So if I scroll a little bit further down, I see that I have three keyholes, one for business, one for pleasure, and one for service. So, since this is mostly business here, I'm going to go to the pleasure one right now.

(Laughter)

THE WITNESS: And now I get an even more interesting picture. It's a room with many doors, the key to the city. I have different kinds of doors here with numbers above it, and with numbers down below that correspond to the doors. So I have the choice of either clicking or actually going. So I thought I'd go to the Sports Door, which is actually a locker room, so I can click right on that door, and it will take me to some more information.

So I come to a sports page about Philadelphia, and if I'm a Phillies fan interested in what the Phillies' schedule might be, or want to go to the games -- Mmm. Well, we just had a little crash of the computer, so... I'm going to start Netscape up again.

JUDGE SLOVITER: I thought that only happened to me.

THE WITNESS: Okay. I'm going to reboot the computer. It didn't happen yesterday. But that does happen with computers, so you just kind of start over.

MR. ENNIS: While this is happening, are there any questions the Court has that she could be explaining?

JUDGE DALZELL: No.

THE WITNESS: This will take a few minutes again for it to start up, and it will again ask me for my password, and then we'll just get back to where we were.

(Pause in proceedings.)

THE WITNESS: Okay. We'll try it again. I'm going to go back into Netscape. One of the things that -- if you've actually been to a location, and you know that you like that location and you want to go back there, you can actually ask the computer to remember that location, put it into what's called a bookmark, and so I actually did that the other day when I was looking in Philadelphia. So now I can just go back to the Key to Philadelphia, instead of retyping the name. I'm still choosing where I want to go, but I've also chosen to remember where I've been, so I can return to that same location. And we can just repeat the steps that I did before.

MR. ENNIS: I apologize to the Court. We've ran through this twice before, and did not have these difficulties. If we might ask a more technical person to approach here, we might be able to figure --

JUDGE DALZELL: Sure.

JUDGE SLOVITER: Sure.

MR. ENNIS: -- out a way around that.

JUDGE DALZELL: By all means.

JUDGE SLOVITER: If you need one of ours to help, we'll send one down.

MR. ENNIS: We may, your Honor.

(Pause in proceedings.)

JUDGE SLOVITER: While -- while we have a few minutes, we'll talk to counsel. We have a motion on behalf of amici curiae to file --

MR. COPPOLINO: I'm sorry. I didn't hear that, your Honor.

JUDGE SLOVITER: We have a motion on behalf of the Author's Guild, et al, to --

JUDGE DALZELL: Leave.

JUDGE SLOVITER: -- file -- leave to file a brief in support of plaintiffs' motion. And I understand there's an objection by the

Government, and if so, I wanted to find out when you could file your opposition, that's all.

MR. COPPOLINO: Well, maybe I don't have an objection anymore then, your Honor. I -- I said that I would reserve the right to object.

My view was consistent with the decision I think that Judge Dalzell made a few days ago, to not have amicus on the grounds that counsel for ACLU and for Jenner and Block (ph) are very well and capably representing the positions of the plaintiffs. I thought that -- in fact, I hadn't even seen that amicus request before. So that was our disposition. If the Court feels otherwise -- I don't think we want another brief to write.

JUDGE SLOVITER: Oh.

JUDGE DALZELL: Okay. Well, then we'll look at it.

MR. COPPOLINO: Fine.

JUDGE SLOVITER: Okay. I mean we weren't backpacking --

JUDGE DALZELL: We just got it this morning, ourselves.

JUDGE SLOVITER: And we were told that you objected, and that was the only reason that I thought we'd ask.

MR. COPPOLINO: I reserve the right to object, solely on the basis of what I read in Judge Dalzell's order, assuming that the Court might not want to consider an amicus brief for the reasons stated in that order.

JUDGE SLOVITER: Yeah. Well, we're not encouraging extra briefs either. We have a lot to read.

JUDGE BUCKWALTER: Why don't we just defer?

JUDGE SLOVITER: All right. We'll defer ruling on it.

MR. COPPOLINO: Okay. Thank you.

JUDGE SLOVITER: Okay. And maybe at some point, you can tell us orally, if you have any basis to object, so you won't have to write another brief.

THE WITNESS: We'll try again.

JUDGE DALZELL: All right.

THE WITNESS: I don't know whether there's something about the Philadelphia Phillies that doesn't want me to go there --

JUDGE SLOVITER: Oh.

THE WITNESS: -- so I'm going to move on.

JUDGE DALZELL; They had a tough year last year.

(Laughter)

JUDGE SLOVITER: Try the ballet.

JUDGE DALZELL: Maybe put arts.

THE WITNESS: One of the really practical ways that I actually used the Internet yesterday when we were setting up, is someone was here and wanted to fax something back to the hotel, and we were able to use the Internet, the Key to Philadelphia, find the location of the hotel and the fax number, and fax something off. So there's some very practical applications.

Another thing that you might possibly do if you were wanting to go to some other location, if you had a trip to Paris planned, you might want to get some information about the Louvre before you went there. So you could also know the address of that location, and type it in.

JUDGE DALZELL: This is the address of the Louvre?

THE WITNESS: Pardon?

JUDGE DALZELL: This is the address of the Louvre you're putting?

THE WITNESS: Of the Louvre, right.

(Pause in proceedings.)

THE WITNESS: Okay. And now this will take me to -- I typed it incorrectly -- to information about the Louvre. So it really begins to show you the global nature of the Internet and how you can just travel all places in different parts of the world.

Now sometimes it takes a while to get things. We happen to be using the Internet at a time when all of California has awakened and is on the Internet, and the East Coast is still using the Internet, so sometimes it takes a little while to get -- get places. I'll try again.

JUDGE DALZELL: Because it's going to France now.

THE WITNESS: That's correct. I believe it's going. It actually -- I assume that the origin of this is in Paris, although I actually don't know. Sometimes they have sites where they keep pieces of the information in different areas --

JUDGE DALZELL: Right.

THE WITNESS: -- so it actually could be accessing a computer that I don't know exactly where the location is.

JUDGE DALZELL: A question I had for our witness this morning which I'll have to wait until tomorrow about, right?

THE WITNESS: I'm not getting there, so let me try one more time.

(Pause in proceedings.)

THE WITNESS: Well, let's -- another place that I had actually looked at to go beforehand was to the museums of London. Let's see if we can get to London instead of to Paris right now.

Okay. So Paris was busy, and now we've gone to London, so -- and this gives you a list of the various museums of London, and if I followed one of these links, I would then be able to get information about what was being shown. So if I go to say, the National Gallery, it would show me what exhibits were being shown, or some information about the National Gallery, so...

Now, when I've chosen to go to these places, it's because I've known the location that I want to go to. Sometimes you don't know where you want to go, or where the information is, and you need to use one of the search engines that I think Mr. Bradner mentioned this morning.

An example of that is last year, my daughter, who is a freshman in high school, had to do a report on the Fragile X Syndrome. And our encyclopedia didn't have anything about, and it was Sunday night, with the report due Monday. So access to libraries was a big limited.

So we sat down at the computer together, and we went and used one of the search engines. There are a number of different search engines that are available.

The one that we're going to use this morning is called Infoseek. And it gives you information. It says search for information about, so I type in Fragile X, and I say search now. What I'm going to get is -- it's going to go out in its database and find me citations, much like a card catalogue, of what matches Fragile X. If I look over here on the right, I can see these citations. It tells me there's a research foundation newsletter, and if I scroll up a little more, there's actually something that says, what is Fragile X. If I follow that link, I can then get some information about the Fragile X Syndrome.

JUDGE DALZELL: Now this search engine that you have, do you pay for that, or does that come as part of your package?

THE WITNESS: That's part of -- they're -- they're sort of built into the Internet as part of the browser.

JUDGE DALZELL: The Netscape browser.

THE WITNESS: The Netscape browser. So there I have information about Fragile X, and it was the jumping off point for her to do her report.

In fact, in one of the places that we found some research, there was actually an E Mail address of someone that was doing current research in that area. And she had the opportunity to E Mail this person,

who was not located in our area, to get information about the Fragile X Syndrome.

JUDGE DALZELL: Mrs. Duvall, do we know from this, where this is from?

THE WITNESS: No. I don't know where this is coming from.

JUDGE DALZELL: And is there any way we could find out -- you know, for -- if we wanted to cite it? That is to say, if your daughter wanted to cite it --

THE WITNESS: Right. Right.

JUDGE DALZELL: -- in her paper, what would she put?

THE WITNESS: Well, she would probably put this Internet address. But I would also look a little further, to see if there were any -- I'd probably go back to the Fragile Research Foundation home page, and see if they had some information about it. So you have to travel around a little bit.

JUDGE DALZELL: Do -- do that, would you? Would you --

THE WITNESS: I think she actually cited the Internet as her reference, and I think --

JUDGE DALZELL: Would you surf to that home page?

THE WITNESS: Sure. Okay. Here I also look up -- here I say the reference section includes several texts on educational strategy, so there is probably a reference section in addition, that will give me some quotations.

JUDGE SLOVITER: But somebody -- but somebody has compiled this --

THE WITNESS: Mm-hmm.

JUDGE SLOVITER: -- for this purpose.

THE WITNESS: Mm-hmm.

JUDGE SLOVITER: This isn't word for word from some publication that -- I think that maybe Judge Dalzell's question also, that appears somewhere.

THE WITNESS: Right. That's my understanding. Someone has compiled this. If there has been something that is actual citation, such as I believe Mr. Bradner mentioned, the Homeland, then it would give credit to the place that it had come from.

JUDGE DALZELL: Well, maybe the Fragile Foundation put it on, because --

THE WITNESS: Right.

JUDGE DALZELL: -- it has here, what is Fragile X.

THE WITNESS: Uh-huh.

JUDGE DALZELL: So presumably, that's what you just had on your screen.

THE WITNESS: That's right. That's a link back to the page that I just saw.

JUDGE DALZELL: So that's a link. You could just -- we could just test that right now.

THE WITNESS: Right. And that would take me back to where -- probably where I just was.

JUDGE DALZELL: Yeah. Now we know.

THE WITNESS: Right. Okay. Now, these are things that I've done, sort of, with my 15 year old. There's also -- many parents that are getting on line with younger children that have some concerns about letting their children roam freely on the Internet, they'd like to have some information about sites that were perhaps geared a little bit more towards children.

And one of the search engines that's out there is called Yahoo, and they've just created a new site called Yahooigans. So if we go

take a visit to -- just make sure I spell it right -- will take us to a site called Yahoooligans. And as this comes up, you can see that it's really -- the content is really geared for younger children -- pictures and science and oddities, and art soup, things like that. So these are the kinds of new content that's been coming up that's really available for young -- for young children to see.

One of the areas that I have had great interest in is Street Smart on the Web, so I'm going to follow that link. And what Yahoooligans has included is the fact that the Internet is a great and wonderful place to see, but there are also some areas that can be troublesome, or some areas you might not -- have things you might not want your child to see.

JUDGE SLOVITER: Before you go on, what category -- what would be the generic name of what is Yahoooligans, in terms of the testimony that we heard this morning? Is that a --

THE WITNESS: That's a URL.

JUDGE SLOVITER: That's a URL.

THE WITNESS: I believe.

JUDGE SLOVITER: Okay.

JUDGE DALZELL: But Yahoo was a search engine?

THE WITNESS: Well, Yahoo is a company that has a search engine and they also created this page for children -- JUDGE DALZELL: Okay.

THE WITNESS: -- so it wasn't connected with the search engine

--

JUDGE DALZELL: Okay.

THE WITNESS: -- at that moment. So these rules for safety are ones that were presented from the National Center for Missing and Exploited Children. And I use them a lot when I'm talking with parents that are getting on line for the first time, to help them understand that it's important for kids not to give out personal information, like their address and phone number, their parents' work address and phone number. And these are just some general rules that are printed here on the screen that parents can see and understand some of the pitfalls of the Internet, and all the wonderful things of the Internet as well.

Now if I scroll a little bit further down on this page, there's also a pointer to Surfwatch, Protect Your Kinds on the Net. And I can actually click that and go to the location on line.

Now the interesting thing is, is that where we are actually now is -- if you remember, we were at Surfwatch home page when I first started. We've now come in to a lower place in the Surfwatch home page. So we don't have to always go down through the top we've come to, because there was a link directly to some lower location, we could get to that location immediately, which sort of explains why this is called a Web, as opposed to just a tree, because you can jump in at any point.

And here, immediately --

JUDGE SLOVITER: Could you bookmark to this particular --

THE WITNESS: Yes.

JUDGE SLOVITER: -- like the thing that we just saw, the page we just saw, in which the child learns to say I will not give anyone my address?

THE WITNESS: Yes. Okay.

JUDGE SLOVITER: Can you bookmark to that, or do you have to bookmark to the whole thing?

THE WITNESS: No. I'll show you exactly. I can go back. There's a back key, right up here at the top, which keeps a record of where I've been. So now I'm going to go back to that page, which is right here, so

you can go back to that information you've seen. I go up under bookmark, and I say add bookmark.

JUDGE SLOVITER: Just to that -- and that gets it to that page.

THE WITNESS: That's it. Now if you look at bookmarks now, you'll see the bottom one says Street Smart on the Web.

JUDGE SLOVITER: Mm-hmm.

THE WITNESS: So now I can go back to that at any point. Now I'll go forward to the point that I had just left.

This is an advertise -- or a place where parents can actually purchase Surfwatch right on line. If they click there, they will go to the Internet Shopping Network and can actually order the software right on line, and they will actually will be able to download it on their computer.

Now, Surfwatch and the other parental technology is available in stores, available on line like this, available from our company directly.

So what is Surfwatch and where did it come from? We -- Surfwatch is -- the product was -- is less than a year old, as is the other parental control technologies, and it came from my husband and myself, concerned about things that were on the Internet that we felt were inappropriate for our child. And my husband has a long technical background, 30 years of experience in this field. So we were able to actually implement the technology that both of us felt was important to have on the Internet.

MR. COPPOLINO: Well -- excuse me, your Honor. I really don't mean to interrupt, but we're getting beyond demonstration, into a direct testimony type situation where she's just --

JUDGE DALZELL: Well, she's just giving a background of her company. Objection overruled.

THE WITNESS: So -- you know, and we really felt like what we wanted to provide were tools. We understood that what our concerns for our kids were different than some other concerns for other -- that other parents might have for their children.

So we really wanted to be able to provide tools, that if parents had serious concerns about what their kids saw on the Internet, they could have very severe filtering technology, and parents who were less concerned with the risk, could allow their kids to wander a little bit more.

And for me, I believed it was important to have my child wander on the Internet as much as I wanted.

So Surfwatch is a product that during this whole demonstration, has been on my computer right here, running the whole time in the background. So you can see it's allowed us to search anywhere that we wanted to go on the Internet, hasn't interfered with us going anywhere, and we still have it running, and it's in the background.

We designed Surfwatch to be easy to install, and easy for parents who don't have a lot of computer experience to put on their machine. And it's about a 10 minute time period to install it, and they install it with their own personal password.

So how does Surfwatch work? Well, one of the things that we did is I knew addresses of where -- places that I might want to go. Well, sometimes kids know addresses of places that they might want to go. And it is possible that kids might know that Playboy Magazine exists on the Internet. So they might know the address of that. And if they open the -- do the open location of HTTP:\\WWW.Playboy, and they hit the open, they will get a message --

(Laughter)

THE WITNESS: Well, again, the Net is slow, so it's actually got to go out and check and see if this is something that Surfwatch blocks, but it should come back blocked by Surfwatch.

JUDGE DALZELL: Is that because it's stopping it? It's programmed to stop it, or -- or will a -- should a message come up?

THE WITNESS: A message should come up. And I don't understand why that's not coming up. So -- I mean what's happening is I can't get there. So that's sort of good news. JUDGE DALZELL: So that's just as effective, I guess, huh?

THE WITNESS: Let's try -- let me see if a bookmark to it will get the connection to work. Well, I don't know. But anyway, let's move on. We'll come back and do that one in a few minutes.

The other thing that -- that I --

JUDGE SLOVITER: Well, in order to show how, to demonstrate, could you think of an -- I don't know the name of another magazine. Do you know the name of another magazine that would be locked?

JUDGE DALZELL: Something else that you know -- that you know you've blocked.

THE WITNESS: Well, I'm going to show you how to block something else, then I'll come back and do Playboy in a minute.

JUDGE SLOVITER: Okay.

THE WITNESS: We -- we did a word search before. So I'm now -- kids often will go to one of the search engines and try searching on a word. So for example, if they type in the word sexy, and they try and do a search, they get blocked by Surfwatch.

JUDGE SLOVITER: Oh.

JUDGE DALZELL: Okay.

THE WITNESS: Okay. So the message does come up. And they might be a little more sophisticated. So they might type in the word erotic. And these are words that we have found most likely lead to places that we think might contain material that's inappropriate for children.

JUDGE DALZELL: Now how do you override it?

THE WITNESS: Okay. I'll show you that in a second.
JUDGE DALZELL: Okay.

THE WITNESS: So let me actually try Playboy one more time. My guess is that often what happens with a lot of these sites is they get very busy in the middle of the day, and you actually can't --

JUDGE SLOVITER: Playboy.

THE WITNESS: Yes. And you actually can't have access to it, which is actually a deterrent, often when a lot of people are going there. But it's not a guarantee, but, you know, it is blocked by Surfwatch.

JUDGE DALZELL: So that may explain why it's slow, because there's just a lot of traffic on that?

THE WITNESS: There's a -- this is -- this is the most busy time on the Internet, during the day. When California's awake, and the East Coast still is busy. It's a very busy time on the Internet, so...

JUDGE DALZELL: We have California time on your terminal.

THE WITNESS: I do. It's because it's my portable that I brought from home, so...so... there. Okay. So I typed in another magazine. I typed in Penthouse. That's the message I should get from Playboy. The only explanation I can give is that for some reason, it's busy out there and I can't get out there. But that's the message you get when you attempt to go to a site like that.

So you asked how easy it is to turn off? That's just another message that Netscape is giving me that it can't -- it was refused access to Penthouse. It's sort of a double message because Surfwatch blocked it, and then Netscape said I couldn't get there, but it couldn't get there at that point because Surfwatch had actually blocked it.

So to turn it off, I go to what's called the control panel, and there's Surfwatch sitting there. And it's turned on, registered to me. I go to turn it off. It asks me for my personal password, okay.

If I type in something -- a kid tries to type in something, you try it, it says, you entered the incorrect password. Nothing has been changed. If I try again, and type in the password that I know is correct, it turns it off.

JUDGE DALZELL: Okay.

THE WITNESS: And now I have access to all of those sites that previously were blocked. And a parent can use this at any time, because it may be the case that Surfwatch has blocked something that a parent thinks is appropriate for their child to see. They can turn Surfwatch off at any time, and go to that location.

And Surfwatch will have available in about a month, something called the Surfwatch Manager, which will allow people to actually add and delete their sites right there, as they're using the computer. So if we've blocked something someone would like unblocked, or vice-versa, they will have a chance to actually change that right now.

And in addition, if a parent wanted -- if a parent was really concerned with what their kids saw and didn't want them very much surfing the net, Surfwatch has a capability to block everything on the Internet, except for the explicit sites that a parent might choose to allow the person -- allow their child to access. So you could block everything, except for the hundred sites that the parent might want the child to access.

So that's the end of my demo. I just -- it was important for me to actually put some visual stuff to what you had seen this morning, so that it actually began to make some sense of what the Web is.

I think it's important, from my point of view, that the Web is a place where you actually make an affirmative choice to go places. It doesn't just come at you. You actually choose to go to locations at each place, each step along the way, and secondly, that it's a global network. That's what's so exciting. I mean I was -- tried to get to Paris -- London, and you could go lots of different places in the world. I think that's really important.

And that there are tools that exist for parents, and this is a brand new technology. We're growing. We have lots of new exciting ideas coming. We're changing and adopting to what the customers want and what's needed in there. But there is technology that allows parents to make choices about what their children see on the net.

JUDGE SLOVITER: Is that the end of show and tell?

JUDGE DALZELL: Is that the end of the direct --

THE WITNESS: Yes, it is.

JUDGE DALZELL: -- as supplemented?

MR. ENNIS: That's the end of our demonstration, your Honor. The Government may want to cross-examine, and if the Court has additional questions --

JUDGE DALZELL: Sure. Mr. Coppolino, will you be doing that?

MR. COPPOLINO: I will be. Yes.

JUDGE DALZELL: Okay.

JUDGE SLOVITER: Are you going to be using this? Are we going to be using these again during this hearing?

MR. COPPOLINO: Today, your Honor? I don't believe so.

JUDGE SLOVITER: Ever?

MR. COPPOLINO: Yes. I think these should be available for when we present our case.

JUDGE SLOVITER: Okay. Okay. It's just a bit of a -- if we could get it off --

JUDGE DALZELL: Well, maybe --

JUDGE SLOVITER: -- we might not feel so --
JUDGE DALZELL: Would it be possible during the break, or --
MR. ENNIS: Well, your Honor, it would just take a moment to lift it down.
JUDGE DALZELL: -- just to take a moment.
JUDGE SLOVITER: Well, not this second.
JUDGE DALZELL: Well, you told me yesterday, you could just take it off right now.
MR. ENNIS: Right. Right. Why don't we do that? If the Government doesn't need the monitors, we can take this down right now.
JUDGE DALZELL: You don't need the monitors, Mr. Coppolino?
MR. COPPOLINO: No.
JUDGE SLOVITER: Today.
MR. COPPOLINO: We don't need them today.
JUDGE DALZELL: Today, okay. Yeah. Yeah. That would be --
JUDGE SLOVITER: If that would be all right, Mr. Coppolino, we would be able to have -- get our own material.
JUDGE DALZELL: It gives us a little more space.
(Pause in proceedings.)
JUDGE SLOVITER: There's a wonderful --
JUDGE DALZELL: Free at last.
MR. ENNIS: I'm going to turn the monitors off and display, if that's acceptable to the Government and to the Court.
MR. COPPOLINO: Could I just clarify, your Honor, does the witness have a copy of her affidavit direct testimony?
JUDGE DALZELL: Do you have this in front of you?
THE WITNESS: No, I don't.
JUDGE DALZELL: Mr. Ennis, or one of your colleagues, could you --
MR. ENNIS: Yes, I can get one quickly, your Honor.
MR. COPPOLINO: And also, your Honor, is there a copy of any of the defendant's exhibits left over from this morning? Because if not --
JUDGE DALZELL: I could give her mine, if you'd like.
MR. COPPOLINO: No. At the appropriate point, I can hand her a copy, your Honor.
JUDGE SLOVITER: All right.
MR. ENNIS: I gave them back to your side during the lunch break.
MR. COPPOLINO: Oh, you gave them back. Okay. Well, we'll hand it up when we need them.

CROSS-EXAMINATION

BY MR. COPPOLINO:

Q Good afternoon, Mrs. Duvall. Nice to see you again. First, with respect to your professional background, do you have any expertise in computer programming?

A No, I do not.

Q Do you have any expertise in computer software development?

A No, I do not.

Q Do you have any expertise in computer hardware development?

A No, I do not.

Q Do you have any expertise in Internet transmission protocols?

A No, I do not.

Q Is it correct to say that your expertise does not extend to the specific technical details as to how Surfwatch actually operates on a computer system?

A That is correct.

JUDGE DALZELL: Could you speak into the -- pull the microphone --

THE WITNESS: Okay.

JUDGE DALZELL: -- is it on, the microphone?

THE WITNESS: Yes.

JUDGE DALZELL: Go ahead.

BY MR. COPPOLINO:

Q And so is it fair to say that your expertise is in what Surfwatch does, as opposed to precisely how it does it on a technical basis? Is that a fair statement?

A Yes, it is.

Q I'd like to refer you to paragraph 21 of your direct testimony affidavit, please. And paragraph 21 describes some of the criteria that Surfwatch uses to block access to sexually explicit sites on the Internet. Is that correct?

A Yes, it is.

Q And just so that the record is clear, that paragraph indicates that Surfwatch's blocking criteria includes a screen or warning at the entrance of a site that identifies as containing adult material, or material that is not suitable for minors, nudity, explicit descriptions of sexual acts, obscenity, explicit descriptions in graphics or text, of genitalia or a sexual apparatus, and sexually exploitive or sexually violent text of graphics. Do you agree that each of these is one of the criteria that Surfwatch uses to block sites on the Internet?

A Yes. That's one of many of the criteria we use.

Q What additional criteria are there?

A I actually don't have the list in front of me, but these are the main criteria, and then we actually go and look at sites, and make a judgment based on what we see.

Q I understand.

MR. COPPOLINO: Your Honor, I am going to give the witness the exhibit book.

JUDGE SLOVITER: Sure.

JUDGE DALZELL: Okay.

JUDGE SLOVITER: Which numbers? Which part of the exhibit book?

MR. COPPOLINO: We're going to give her one to 45, and I'll identify the exhibits.

BY MR. COPPOLINO:

Q I'll tell you which exhibit I'm going to ask you to look at.

A Okay.

(Pause in proceedings.)

BY MR. COPPOLINO:

Q All right. Ms. Duvall, would you take a look at Exhibit 30, please? And do you -- do you recognize this exhibit as an exhibit I showed you at your deposition on Monday, which lists a number of so-called x-rated sites that are listed in the Internet yellow pages? I believe that's the 1995 edition. Is that correct?

A Yes. I remember seeing this document.

Q All right. Are these the type of sites that Surfwatch is designed to block?

A Yes. Surfwatch is designed to block these sites.

Q That's all we're going to do with that exhibit. Thank you. Referring to paragraph eight of your direct testimony --

A Excuse me. Eight?

Q Eight.

JUDGE BUCKWALTER: You were talking about Exhibit 30 there?

MR. COPPOLINO: Excuse me, your Honor?

JUDGE BUCKWALTER: What exhibit were you on?

JUDGE DALZELL: 30.

MR. COPPOLINO: I was looking at 30.

JUDGE DALZELL: He had looked at 30. You got it there. You got it now.

JUDGE SLOVITER: You mean it's designed to block these?

JUDGE DALZELL: No. Turn the page.

JUDGE SLOVITER: Oh. Oh. Okay.

MR. COPPOLINO: I asked, your Honor, if --

JUDGE SLOVITER: Thank you. All right.

MR. COPPOLINO: I asked her if it was designed to block the type of sites that are listed at Exhibit 30, and I believe the witness indicated that it was.

JUDGE SLOVITER: Okay. All right. I was looking -- okay. Fine.

JUDGE BUCKWALTER: I missed that. I missed it.

MR. COPPOLINO: I might have gone a little too quickly. I apologize.

JUDGE SLOVITER: Yeah.

JUDGE BUCKWALTER: Well, two out of three missed it.

BY MR. COPPOLINO:

Q Mrs. Duvall, you state in paragraph eight that Surfwatch blocks access to more than 5,000 Internet sites that are known, or appear likely to contain text or graphics of a sexual nature that Surfwatch considers to be inappropriate for minors. Is that correct?

A Yes, it is.

Q Is it correct that that figure could be as high as 8,000?

A It's a difficult number to actually pinpoint. Let me give you an example. We block Playboy. We count that as one site. Playboy actually could have multiple pages underneath that, so it could be a hundred additional pages in that. So there -- now the number would be a hundred and one. So depending on how we want to actually count, we can't always count exactly the sites that we're blocking because there could be multiple underneath a certain header.

In addition, we block on some word and pattern matching technology. And that's kind of a fluid ongoing thing, so we don't actually have a count of exactly how much.

Q Well, I'm just trying to get a sense of the range of the number of sites. Would you take a look at Exhibit 22, please, of defendant's exhibits?

A Yes.

Q Is that the affidavit that was filed in this case, signed by your husband, Bill Duvall?

A Yes.

Q Would you look at paragraph nine? Does paragraph nine of that affidavit state that Surfwatch blocks access to approximately five through 8,000 Internet sites containing sexually explicit material? Is that correct?

A That's what it says.

Q Are you saying your husband's statement was not correct?

A No. I assume if he made that statement, that he assumed that it was correct.

Q When Surfwatch was first introduced in May of 1985 -- is that correct?

A '95.

Q 1995. Excuse me. Do you know roughly how many specific sites that Surfwatch had identified that were blocked by the software?

A I don't actually have a count, back in May of 1995 when we first released.

Q Could you give us an approximation?

A Again, since we were blocking both on word matching pattern technology and explicit sites, it was difficult. But I would imagine at that time, we were probably blocking about 2,000 sites.

Q Okay. Has the number of sites that -- excuse me. Could you tell me what the increase in the number of sites that Surfwatch has specifically identified has been since May of 1985, the number of sites that have been specifically identified by Surfwatch?

A Again, that's a difficult number, because if I'm listing Playboy as a specific site, I count that as one. It could also be counted as a hundred and one.

Q Well, do you recall when we met at a deposition last Monday, that you made a general estimate of a couple of thousand new sites had been specifically identified by Surfwatch since May of 1995? Do you recall that testimony?

A I don't recall exactly saying that, but --

Q Well, let me refresh your recollection, then.

MR. COPPOLINO: Your Honor, may I give the witness a copy of her --

JUDGE DALZELL: Yes, you may.

BY MR. COPPOLINO:

Q I'll refer you the page...

A Okay.

Q Take a look at page 145, please. Actually, starting at the bottom of page 144, I asked you -- and I'll just quote from the transcript:

"Do you have any estimate of the number of new sites that have been found since the software was released in May of 1995?"

"Answer: Not specifically, no."

"Do you have a general estimate?"

"Answer: It would be a couple of thousand."

Is that testimony correct?

A That is correct.

Q Mrs. Duvall, does Surfwatch utilize a team of so-called surfers to search the Internet for sites that may contain sexually explicit material, as described in paragraph 21?

A It's one of the ways we use to find new sites.

Q Excuse me?

A That's one of the ways we use to find new sites.

Q Could you indicate how many people are currently performing this task?

A I believe we have at least 10 surfers at this time.

Q Are a number of these individuals university students?

A Yes, they are.

Q And the ones that are university students, are over the age of 21, is that correct?

A Yes, they are.

Q Okay. Approximately how many hours per week do you ask your searchers -- does Surfwatch ask its surfers to search the net for sites that Surfwatch may choose to block?

A We tell them we'd like to surf for a minimum of 10 hours per week.

Q And how many hours per week do you estimate that they actually do search, on average?

A Probably closer to 20 on average per week.

Q That's your current estimate today, of 20?

A Well --

Q Well, let me try to refresh your recollection on that one, too. Why don't you take a look at page 49.

JUDGE DALZELL: Matt, check if her microphone is on.

JUDGE BUCKWALTER: Yeah. It doesn't seem --

JUDGE DALZELL: I don't think her microphone's on.
JUDGE BUCKWALTER: Is her microphone on?
THE WITNESS: It is. It's just not close enough to me,

probably.

JUDGE DALZELL: It's a very sensitive microphone, so...
JUDGE BUCKWALTER: Mine's on off.
JUDGE DALZELL: No, no. Hers.
THE CLERK: Oh. It's on.
JUDGE DALZELL: Yeah. Okay.
JUDGE SLOVITER: You don't need yours on to get --
JUDGE BUCKWALTER: No, I put mine off.
JUDGE SLOVITER: You don't need yours on --
JUDGE BUCKWALTER: -- mine on. I don't want to --
JUDGE SLOVITER: Yeah, but for you to get on the tape, don't
you need to be -- I mean in my court, you do.
MR. ENNIS: Your Honor, could we also see if this could be
turned off? We're having trouble hearing at this end as well.
JUDGE DALZELL: Have what turned off?
MR. ENNIS: Whatever this projector is.
JUDGE DALZELL: Oh, sure.
(Pause in proceedings.)

BY MR. COPPOLINO:

Q Mrs. Duvall, perhaps you heard me say two weeks instead of one, but my question is the number of hours on average the surfers search per week, and as the deposition transcript on page 49 indicates, that your estimate was, "per week, I'll say about 12 hours." Is that correct?

A That's what I said the estimate was.

Q And -- and to be accurate, you said that's a guess, or that's an estimate, is that correct?

A Yes.

Q All right. Mrs. Duvall, do the surfers, I'll call them, that Surfwatch utilizes, do they search for new sites with the Surfwatch software loaded on their computers?

A Yes, they do.

Q And is the idea to find sites that Surfwatch does not block?

A Yes. That's the idea.

Q And the idea is to use the -- to load the software in advance, so that if they find a site that's not blocked, they know that it's not blocked. Is that correct?

A Yes.

Q And do your surfers in fact find that there are sexually explicit sites meeting the criteria described in paragraph 21 that are not blocked by the software when it is loaded onto the computer?

A Yes, they do.

Q With the Surfwatch software loaded, could you indicate approximately how many new sites your surfers find per week?

A We probably get between a hundred and 200 sites a week.

Q And is it fair to extrapolate that number out to a monthly approximately of 400 to 800 new sites identified a month?

A Well, it's very difficult to extrapolate with a new company that's only been around for nine months. So I would be a little hesitant to do a lot of extrapolating.

Q Do you recall that you testified to that effect last Monday?

A No, I didn't recall --

Q Well, let's take a look at page 144 of your deposition. The bottom of page 143 to 144. I had asked you about a weekly number.

"Was that a weekly number?"

"Answer: I said 100 to 200 a week."

"Question: So could I extrapolate out to 400 to 800 a month, perhaps. Is that fair?"

"Answer: Sure."

Was that testimony that you gave on Monday correct?

A That is the correct testimony I gave on Monday.

Q Do you disagree with it today?

A No, I don't disagree with it. I -- it's a difficult number to always extrapolate, since we don't have a lot of history to base this on.

Q Mrs. Duvall, is it correct to say that Surfwatch's experiences at the number of sites on the Internet containing sexually explicit material of the type described in paragraph 21 is constantly changing? Is that a correct statement?

A Yes, that is.

Q I believe your affidavit indicates in paragraph 11 that Surfwatch offers a subscription service that automatically updates the identification of specific sites that Surfwatch blocks. Is that correct?

A Yes. That's correct.

Q Could you tell the Court approximately how much that service costs per month?

A Well, if they purchase the service directly from us, it's \$5.95 a month, or \$60 for a yearly subscription. But it is available through some of the Internet Service Providers at a much lower cost to people. It's provided -- included as part of their package.

Q Could you indicate how often Surfwatch normally provides its subscribers an automatic updated list of sites that have been -- that Surfwatch would add to its block site list?

A At this point, we're on a 28 day cycle.

Q Mrs. Duvall, do you agree that an important aspect of maintaining the effectiveness of Surfwatch is to subscribe to the list of updated sites?

A Yes, I do.

Q And would the effectiveness of Surfwatch diminish over time, if a user did not subscribe to a list of updated block sites?

A If they were using the standard version of Surfwatch, then the subscription wouldn't make a difference.

JUDGE SLOVITER: What was that?

JUDGE DALZELL: What did you say? I'm sorry.

THE WITNESS: If they're using the standard version. We have a version where parents will be able to block everything on the Internet, except what they choose their child to see, and therefore the subscription would not make a difference at that point --

JUDGE DALZELL: I see.

THE WITNESS: -- because they would be making their own choices as to what they wanted their child to see.

JUDGE DALZELL: Oh, so -- go ahead.

JUDGE SLOVITER: Go ahead. Now what was --

JUDGE DALZELL: So you can get -- you can get then a version of Surfwatch that's a total block --

THE WITNESS: Yes.

JUDGE DALZELL: -- except for sites that the parents specifically authorize.

THE WITNESS: That's correct.

JUDGE DALZELL: Okay.

JUDGE SLOVITER: But I didn't hear the answer to Mr. Coppolino's question before, which was if you didn't get that version and did get the regular version, but didn't get the monthly update, what would the effectiveness be? I think that was your question, paraphrased.

THE WITNESS: Right. Right.

JUDGE SLOVITER: And I just didn't hear your answer.

THE WITNESS: Okay. The effectiveness would diminish, as there are new sites that are coming on the Internet all the time. So to have the most updated filters available, you'd need to subscribe to the service.
BY MR. COPPOLINO:

Q And is it -- is it fair to say that the software -- the new software that you're developing that you've just described to the Court, reverses the presumption, and instead of selecting sites to block, allows parents to select sites to provide access to?

A That's correct.

Q Is Surfwatch going to cease using its annual -- or 28 day updates of updated sites, once this new software is available that you just described?

A Would you repeat that again, please?

Q What I wanted to know is when you have the new software that's going to allow parents to block everything except what they want, does Surfwatch contemplate ceasing its subscription service, which would provide automatic updates of block sites?

A We don't plan to, at this point. And we -- I mean at this point, we block every -- we update automatically every 28 days. That's a number that can change at any time. We can automatically update anybody at any time, if we so choose. They just can -- we can set the number to be every five days, if we think that's more appropriate, or every three days, or every two weeks. So that's a number that's not solid, hard built into the program. We can change that as we find maybe it's more appropriate to have someone update on a weekly basis, instead of 28 days.

Q Does Surfwatch have any reason to believe that the need to continue to provide an updated list of sites will diminish for the foreseeable future?

A You're asking me to predict what's going to happen on the Internet. It's difficult to say what will happen, as far as people providing content on the Internet, of the nature that we have been filtering out at this point.

Q Would you take a look at page 147 of your -- of your deposition? I asked you then:

"Is there any reason to believe that the necessity for Surfwatch to continue to update its list of block sites will diminish in the foreseeable future?"

"Answer: No."

Is that your testimony on Monday?

A Yes, it is.

Q Paragraph seven of your -- of your affidavit today, if you could take a look at that, please. You use a phrase, "the tiny portion of inappropriate material on the Internet." Do you consider the 5,000 sites that Surfwatch attempts to screen to be a tiny portion of inappropriate material on the Internet?

A Yes, I do.

Q And what's the basis for that statement? Have you -- let me -- let me strike that question and ask this one. Have you done any statistical analysis of the percentage of material that Surfwatch screens, as a percentage of the total material on the Internet?

A Would you repeat that question?

Q Have you done a -- has Surfwatch done a statistical analysis of the percentage of the material that Surfwatch screens, as a percentage of the total material on the Internet?

A We haven't done it -- we -- Surfwatch has not done any statistical analysis.

Q Does your -- is your statement in this paragraph reflecting a particular study?

A Where's that -- where are you, paragraph seven?

Q Paragraph seven. The characterization, "a tiny portion of inappropriate material on the Internet."

A I'm not seeing that.

Q Of your affidavit. It's in the second sentence.

A The second sentence of paragraph seven, or am I looking at the wrong thing?

Q Well, I think so, but most of your --

A I'm looking at the wrong affidavit.

MR. COPPOLINO: Could I assist the witness perhaps, your Honor?

JUDGE DALZELL: It's this one, in the binder here.

THE WITNESS: Okay. There were two of them, and I was looking at the wrong one.

JUDGE BUCKWALTER: You can assist her, though.

JUDGE DALZELL: Page four.

JUDGE SLOVITER: Yes.

JUDGE DALZELL: Yeah. You want to show her, Mr. Coppolino?

THE WITNESS: Sorry?

BY MR. COPPOLINO:

Q I was referring to your --

A Oh, okay. Okay. That's what I was -- they look -- yeah. Q Tab C.

A Okay. Thank you.

Q That -- that -- I'm sorry. I'm sorry.

A Is that -- okay. That wasn't in the other one. Okay. Okay. Well, just -- I mean from my experience in what I know is out on the Internet, and there have been some numbers that have bantered around, that there are over 50 million pages of information on the Internet, I tend to believe that there is a small amount of inappropriate material on the Internet.

Q But according to your affidavit, there are at least 5,000 to 8,000 sites that Surfwatch has currently identified. Is that correct?

A About 5,000 sites that we block, that aren't --

Q That you block.

A Right.

Q Well, I assume that includes a combination of those you've identified, as well as a text blocking mechanism. Is that correct?

A Yes.

Q Okay. And incidentally, if you block something by the text blocking mechanism, are you aware -- you become aware of the specific site?

A No, we do not.

Q Would you take a look at paragraph 23, please? If you'd like to take a moment to look through paragraph 23. Have you had a chance to look over paragraph 23, Mrs. Duvall?

A Mm-hmm.

Q Paragraph 23 indicates in the second to last sentence, that Surfwatch blocks 90 to 95 percent of certain sites -- I'm not quoting exactly, so I'm going to let you explain this --

A Mm-hmm.

Q -- but 90 to 95 percent of certain sites identified by sexually explicit key words, such as sexy or erotica, is that -- is that correct, that Surfwatch says that it blocks 90 to 95 percent of certain sites identified by sexually explicit key words, such as sexy or erotica? Is that -- is that the --

A What -- what that -- what that really means is that we believe that most sites that attract -- there's so many sites on the Internet, that there has to be something that attracts someone to go to that site. So either it's a site that they know about, such as Playboy.Com, or it's a site that has

something in its title that's going to draw someone to there. If there's a site that says Ann's Home Page, it's not likely, if a child is searching for sexually explicit material, they're going to go to that home page.

But if something says sexy, sexy, sexy in the title, there's a good chance that a child might be attracted to that.

And since we can block on what's in the title, we've come to find that we believe we block about 90 to 95 percent of what we call the readily available sites on the Internet that contain sexually explicit material. And it has been our experience in the thousands of copies that we have out there, that we're not getting a huge amount of complaints from parents and teachers that we're missing huge amounts of material that students and kids are finding on the Internet.

Q Mrs. Duvall, do you recall describing this estimate to me last Monday in your deposition, as a marketing statement?

A I said that it was used -- that I had taken it -- my husband had taken it from a marketing statement, that we had used it as a marketing statement.

Q As a Surfwatch marketing statement.

A Mm-hmm. Yes.

Q You testified previously that the number of sexually explicit sites on the Internet is changing constantly. Is that correct?

A That's correct.

Q And you also testified previously I believe that your surfers are finding a hundred to 200 new sites per week, that Surfwatch would block. Is that correct?

A That's correct.

Q Is it possible to determine at any given time how many sexually explicit sites are actually added and removed from the Internet?

A No.

Q One question with respect to the demonstration. I believe you indicated that in order to connect to the Internet, somebody had to buy a modem. Could you indicate to the Court whether or not there are computers that actually come with a modem built in?

A There are computers that come with modems.

Q Is it some, or many, or most? Do you know?

A I don't have that -- no, I don't know that information.

Q So you wouldn't know if it's -- if it's today's technology, would you know whether or not most computers come with a modem built in?

A No, I wouldn't.

Q You don't know?

A I don't know.

Q Okay.

MR. COPPOLINO: I thank the Court.

JUDGE SLOVITER: Mr. Ennis?

MR. ENNIS: Just a couple of brief questions.

REDIRECT EXAMINATION

BY MR. ENNIS:

Q Mrs. Duvall, you were testifying today, primarily on behalf of Surfwatch. But is it fair to say that there are several other software companies that produce comparable products?

A Yes, there are.

Q And do some of those other companies produce products that permit parents to choose to block all access to the Internet, except for sites the parents have previously selected as appropriate?

A To my understanding, yes.

Q I think there's been a little confusion about how your blocking works.

Is it fair to say that you block sites, regardless of whether the site in its

address has a sexy word, if you know the site contains inappropriate material? Is that correct?

A That is correct.

Q Like, for example, you said Ann's Home Page. That doesn't sound bad, but if you knew that Ann's Home Page contained inappropriate material, you would block that site as a site, correct?

A Absolutely.

Q And then is it also true that you block because of your word pattern technology system, so that if the address of the site has a word like sexy or porn, or cyberporn, you would block that site for that reason?

A That's correct.

Q Now, you testified that insofar as you're blocking by known site, that if you don't subscribe to the service, the effectiveness of site blocking will diminish over time, correct?

A That's correct.

Q Is that also correct, or is that incorrect when you're blocking with respect to word recognition?

A Not -- absolutely not the same amount, because the words are always there, and will remain there, and we will continue to block on those words forever.

Q So that hypothetically --

A Mm-hmm.

Q -- if, in a two week period, 200 new sites were added to the Web, and all of those 200 new sites had a word in the title, like adult, or sexy, or erotic --

A Mm-hmm.

Q -- even if you hadn't investigated those sites individually, they'd be blocked?

A That's absolutely correct.

MR. ENNIS: I have no further questions.

MR. COPPOLINO: Could I ask one?

JUDGE SLOVITER: Oh, yeah. We may have some, too.

MR. COPPOLINO: I understand, your Honor.

RE CROSS EXAMINATION

BY MR. COPPOLINO:

Q Mrs. Duvall, just following up on Mr. Ennis' questions, if Surfwatch had not previously identified the site captioned Ann's Home Page, or something of that nature -- let's just say Ann's Home Page -- as containing sexually explicit material, if you had not previously identified that specific site, would the site be blocked by Surfwatch?

A No.

MR. COPPOLINO: Thank you.

JUDGE SLOVITER: Could I ask some questions?

JUDGE DALZELL: I have some, too. You go first.

JUDGE SLOVITER: Is Surfwatch a money making project?

THE WITNESS: I hope so.

(Laughter)

JUDGE DALZELL: That's the -- that's the hope.

JUDGE SLOVITER: If it stopped being a money making project, would you -- and your children had become adults, there would be -- is it correct that there would be no reason for you to continue with this project?

THE WITNESS: Well, I think the original reason that inspired the idea was that we have a child at home. But as we have developed this software, it's become very clear to me that parents would like to have tools for themselves, to use on the Internet, as their children become -- come on the Internet, for them to help filter out what they think is inappropriate. So I would like to continue the work that we've begun at Surfwatch.

JUDGE SLOVITER: But there's no assurance to the public, the Government, parents, that your particular company will remain in existence and provide this alternative. Is that right?

THE WITNESS: That's probably correct.

JUDGE SLOVITER: On the other hand, I gather what you're telling us is that the facility exists, so that if you don't do it -- because, with all due respect, one might say you're a small entity in this totality of what we heard the first witness talk about --

THE WITNESS: Mm-hmm.

JUDGE SLOVITER: -- somebody else might do it.

THE WITNESS: In addition, I think that we --

JUDGE SLOVITER: Well --

THE WITNESS: Okay.

JUDGE SLOVITER: -- yes or no on that, first.

THE WITNESS: Yes. No, that's true. Someone else might do it.

JUDGE SLOVITER: And at the moment, you're -- I assume you're paying these college students and one, as I know as a parent of one that just finished, you can't always be sure that they won't be busy doing exams, or other things. Is that correct?

THE WITNESS: That's correct.

JUDGE SLOVITER: Have you ever explored the possibility of contacting parents' groups, and church groups, and other groups that might be interested in this, to notify you of appropriate -- what they would think are words that should be added, or sites that should be added?

THE WITNESS: Absolutely. In fact, we solicit from our customers now to send us information if they find sites that we aren't blocking, so --

JUDGE SLOVITER: But do you check those sites before you block them, to see whether your view as to whether they should be blocked, may differ from the view of your volunteer?

THE WITNESS: Yes, we do. We check all the sites.

JUDGE SLOVITER: Then your subscribers -- is it correct to say that your subscribers are dependent on your view of what may be inappropriate for children?

THE WITNESS: At this point, yes.

JUDGE SLOVITER: Judge Dalzell.

JUDGE DALZELL: Yeah. I had a couple questions on your declaration. On page 19 in paragraph 39, you make reference to "parental control software that blocks access to non-Internet sites also is available." Could you tell me, what is a non-Internet site?

THE WITNESS: That was in reference to -- there's some bulletin boards, some separate computers that people can dial from their home, directly to a bulletin board. And there is some software available that will allow you to actually block on specific phone numbers and -- and whatever.

JUDGE DALZELL: Okay. If you know what those numbers are.

THE WITNESS: Yes.

JUDGE DALZELL: Okay. I got you. And on page 20, paragraph 41, you make the statement that 30 percent of Surfwatch blocked sites, "originate outside the United States." How do you know that?

THE WITNESS: That's from our actual list of sites that we block, so that number may actually be higher than that. But of the known sites where we specifically have the name of the site, it's approximately 30 percent of those that come from outside --

JUDGE DALZELL: And how are you able to tell that they originate outside the United States?

THE WITNESS: Well, even though today, when I wasn't sure that I came from Paris, many sites actually do have an identifier on them that indicate what country they originated.

JUDGE DALZELL: Okay. So it's based on an actual canvas that you've done --

THE WITNESS: It's an --

JUDGE DALZELL: -- of these sites.

THE WITNESS: It's an actual address. We can look at the address, and decide whether it comes from United Kingdom or Finland.

JUDGE DALZELL: Let's assume there's 5,000 blocked sites. You have actually counted, or your firm has actually counted 1500 -- to wit, 30 percent as being from outside the United States. Is that correct?

THE WITNESS: That's correct.

JUDGE DALZELL: Okay.

THE WITNESS: We didn't count. We used the computers to help us figure that out, so...

JUDGE DALZELL: Okay. And last -- two other questions. You also --

JUDGE SLOVITER: Yes. The answer's yes. You may ask.

(Laughter)

JUDGE DALZELL: Thank you. You also say at page 31, you make the statement, which I'm curious to know what the source of the information is --

THE WITNESS: What page was that?

JUDGE DALZELL: -- that 50 percent of the nation's public schools have connected to the Internet. You cite a survey by the U.S. Department of Education. Could you be more specific?

THE WITNESS: What page are you on?

JUDGE DALZELL: Page 14.

THE WITNESS: 14.

JUDGE DALZELL: Paragraph 31. And you go on to say that your firm has sold its software to these school districts. You see the bottom of page 14?

THE WITNESS: Right. Okay. We -- this was a survey that was listed in the local paper, that 50 percent of the nation's public schools have connected to the Internet. That was --

JUDGE DALZELL: What percentage of your customers are public schools?

THE WITNESS: I'd say presently about 70 percent of our customers are public schools.

JUDGE DALZELL: 70?

THE WITNESS: Yes.

JUDGE DALZELL: Percent. And lastly, how many units, approximately, have you sold to date?

THE WITNESS: That is a very difficult number for me to come up with.

JUDGE DALZELL: It's your company.

THE WITNESS: It is. I know it's my company. We sell a certain number from our local office. We also have retail distribution that goes through a distributor.

And in addition, we have -- we've done a deal called Internet in a Box For Kids, and recently, Family PC Magazine shipped a hundred thousand of these CDs out to families.

So it's really difficult for us to say really how many installed products we have. We don't actually know that someone's installed until they actually subscribe. And what we do is we give people a couple of months of free update, so they can get used to the pattern, see how it works.

So we're just beginning to get those figures coming in, since we are such a new company.

JUDGE DALZELL: Okay. So how many subscribers would you say you have now, roughly?

THE WITNESS: About 1500 subscribers.

JUDGE DALZELL: Okay. Very good.

JUDGE BUCKWALTER: Do you have competitors out there?

THE WITNESS: We sure do.

JUDGE BUCKWALTER: How many do you have, just roughly?

THE WITNESS: There are probably four that I know of right now.

JUDGE BUCKWALTER: Mm-hmm.

THE WITNESS: And there are a few others that are lurking, I'm sure.

JUDGE BUCKWALTER: Okay. How do you -- I think you explained how you override the Surfwatch. Is that through a -- some kind of code?

THE WITNESS: Basically, it's a password that the parent, or whoever installs the software, puts in. They make it up when they actually install the software.

JUDGE BUCKWALTER: They make -- they --

THE WITNESS: They make it up. It's like your PIN number at your bank. So you make it up when you install the software, and then you just use that same password.

JUDGE BUCKWALTER: Can a clever person get a hold of that somehow, or is there a way of finding that out?

THE WITNESS: There's no way of --

JUDGE BUCKWALTER: Other than the -- other than the parent or --

THE WITNESS: Parent telling it.

JUDGE BUCKWALTER: -- revealing it.

THE WITNESS: There's no -- it's not an easy way. We've taken a lot of effort to try and prevent tampering of the software. And I'd say in the numbers that we have out there, we've received very few complaints from parents or teachers that the children have disabled the software.

JUDGE BUCKWALTER: Okay. That's all.

JUDGE SLOVITER: I have a question.

JUDGE BUCKWALTER: Thank you.

JUDGE SLOVITER: If you could get the public schools in this country, or private schools -- Catholic schools, for example -- to agree on what was inappropriate material, could they develop their own version of Surfwatch or a blocker?

THE WITNESS: What we have available today is -- because we have this -- different filters available, if you wanted to put together a list of sites that you wanted blocked, and then make that available -- for example, the Boy Scouts of America wanted to put together a list, or the schools wanted to put together a list of sites that they wanted blocked. We would create a special filter set for the school. And then, if they had technology like Surfwatch, then they would have access to that specific filter set.

JUDGE SLOVITER: Would they need you to make out the filter set? In other words --

THE WITNESS: No. They could --

JUDGE SLOVITER: -- somebody who was -- who knew as much technical -- had as much technical background as your husband, for example, or whoever helped develop this -- I think Mr. Friend, was it, or somebody else -- could they do it, independent of you?

THE WITNESS: There's two separate issues. There's actually the software technology that is fairly sophisticated. But developing the list or the filters, I could do that. I mean anyone without any technical background could develop the list. Then they would need that technology to be able to identify those sites that were trying to be accessed, in order to be able to block them.

JUDGE SLOVITER: Did our questions elicit -- evoke any additional questions from counsel? Because I -- we don't want --

MR. COPPOLINO: No, your Honor. Thank you.

MR. ENNIS: No, your Honor. May I ask your Honors if the witness may be released?

JUDGE SLOVITER: If it's all right with them, sure.

MR. ENNIS: And since this -- I don't think the Government needs the computer. It's her personal computer. May she take that with her?

JUDGE SLOVITER: Yeah. I think that we'll -- it might be an appropriate time to break, and you can take care of all these matters.

JUDGE DALZELL: Will your next witness be Dr. Hoffman, or --

MR. HANSEN: Your Honor, we -- we would next like to call the two witnesses that the Government does not wish to cross-examine, Mr. Kuromiya and Ms. Warren, in the event the Court wishes to ask any questions of them, so that we can release them, if the Court --

JUDGE DALZELL: And Mr. Croneberger will be around tomorrow?

MR. HANSEN: Ms. Hoffman is here, Dr. Stayton is here, and as I understand, Mr. Croneberger will be here tomorrow.

JUDGE DALZELL: He'll be here tomorrow. Okay.

MR. ENNIS: He's here now, actually.

JUDGE DALZELL: Okay. Fine.

JUDGE SLOVITER: But will he be here tomorrow to --

MR. ENNIS: Yes, whenever -- with the Court's convenience.

JUDGE DALZELL: Yeah, because we -- I think we have some questions. Okay.

(Recess taken from 2:55 p.m. to 3:10 p.m.)