

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

MAINSTREAM LOUDOUN, et al.,  
Plaintiffs,

and

THE SAFER SEX PAGE; BANNED BOOKS ON-LINE, owned and operated by JOHN OCKERBLOOM; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN MARYLAND; ROB MORSE; BOOKS FOR GAY AND LESBIAN TEENS/YOUTH PAGE, owned and operated by JEREMY MEYERS; SERGIO ARAU; RENAISSANCE TRANSGENDER ASSOCIATION, and THE ETHICAL SPECTACLE, Plaintiffs-Intervenors,

v.

BOARD OF TRUSTEES OF THE LOUDOUN COUNTY LIBRARY, and its members in their official and personal capacities, JOHN J. NICHOLAS, JR., Chairman; SPENCER D. AULT, Vice Chairman; RICHARD H. BLACK; CHRIS HOWLETT; MARY ELLEN VANNEDERYNEN; and in his official capacity, DOUGLAS HENDERSON, Director of Library Services, Defendants.

Case No. 97-2049-A

**PLAINTIFFS-  
INTERVENORS  
PROPOSED  
COMPLAINT  
FOR  
DECLARATORY  
AND  
INJUNCTIVE  
RELIEF**

Plaintiffs-Intervenors, through their attorneys, allege upon information and belief:

**Preliminary Statement**

1. Plaintiffs-Intervenors ("Intervenors"), who provide valuable information for free on the Internet, seek injunctive and declaratory relief against defendants for their enactment and implementation of an Internet access policy that prevents Intervenors from communicating their constitutionally protected speech to patrons in the Loudoun County Library.

2. The Loudoun County Library is a public library in Loudoun County, Virginia that provides a wide range of books and other information resources to the public for free. The Loudoun County Library now provides 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. This case presents important constitutional questions concerning whether the government can prevent Internet speakers from communicating constitutionally protected information on the Internet to persons whose only access to online resources may be their local public library.

3. Intervenors include individuals and organizations who communicate information free of charge on the Internet's World Wide Web ("Web"). Intervenors all provide valuable, constitutionally protected speech on the Internet, including safer sex information, the full text of books that have been subject to censorship attempts throughout history, resources promoting equal educational and career opportunities for women, a list of books of interest to gay and lesbian youth, an online magazine about politics and government, a daily newspaper column, and visual art work. Intervenors want to reach all interested Internet users world-wide, regardless of age, including patrons in the Loudoun County Library.

4. On October 20, 1997, defendants, through the Board of Supervisors of the Loudoun County Library ("the Board"), passed by a vote of 5-4 a policy entitled "Policy on Internet Sexual Harassment" ("the Policy"). The Policy requires that "site-blocking software . . . be installed on all computers" for the purpose of limiting access to materials that are "pornographic" or "harmful to juveniles." The Policy's mandate to block all access to such materials, including access by adults, on its face suppresses speech that is unquestionably constitutionally protected for adults and for minors. By using blocking software to implement the Policy, defendants are in effect "removing books from the shelves" of the Internet by blocking many Internet sites with valuable educational, political, literary, artistic, social, and religious speech that would otherwise be available to library patrons.

5. After passing the Policy, defendants purchased X-Stop, a blocking software produced by Log-On Data Corporation, and installed X-Stop on all of the Internet access terminals at the library. X-Stop is created by an outside computer software vendor that has developed a list of sites that it blocks on the Internet. Thus, although by using X-Stop defendants are blocking Internet speech that would otherwise be available to library patrons, defendants do not select the sites that X-Stop blocks.

6. Blocking software cannot be "fixed" to block only speech that is unprotected by the Constitution. There is simply no way for a computer software program to make distinctions between protected and unprotected speech. Defendants' mandate that blocking software be used whenever a patron accesses the Internet, no matter what the software, will suppress ideas and viewpoints that are constitutionally protected from reaching willing patrons.

7. On December 22, 1997, plaintiffs Mainstream Loudoun et al. filed this case. Plaintiffs, who include parents, citizens, and other public library users in Loudoun County, seek declaratory and injunctive relief against the Policy enacted by defendants, which severely limits plaintiffs' access to public information that would otherwise be available through the Internet in Loudoun County public libraries.

8. Intervenors are Internet speakers who seek declaratory and injunctive relief against the Policy enacted by defendants which currently blocks or recently blocked them from communicating information on their Web sites to patrons in the library through the use of

the blocking software X-Stop, in violation of the First, Fifth and Fourteenth Amendments of the United States Constitution.

9. Defendants also block a wide variety of other Web sites that contain valuable and constitutionally protected speech, such as the entire Web site of Glide Memorial United Methodist Church, with over 2000 members located in San Francisco, California, and the entire Web site of The San Francisco Chronicle.

10. Although defendants block intervenors' speech promoting safer sex practices, supporting gay and lesbian youth and transgendered persons, promoting career opportunities for women, opposing censorship of the Internet, and providing access to previously banned books, defendants do not block a variety of sites that express viewpoints contrary to the viewpoints expressed by Intervenors. For example, the Board does not block sites opposing homosexuality and transgender behavior, opposing employment by women outside the home, favoring Internet censorship, and promoting abstinence rather than safer sex practices.

#### Jurisdiction and Venue

11. 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 28 U.S.C. § 1343(3). This action is brought pursuant to 42 U.S.C. § 1983.

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

13. The Court has the authority to award costs and attorneys' fees under 42 U.S.C. § 1988.

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

#### The Parties

15. Plaintiffs, who include parents, citizens, and other public library users in Loudoun County, Virginia, are described more fully in paragraphs 12-25 of Plaintiffs' Complaint for Declaratory and Injunctive Relief, filed December 22, 1997.

16. Intervenors are briefly described below. The impact of the Loudoun County Library Policy on the Intervenors' online communications is described more fully in paragraphs 92-160.

17. Intervenor THE SAFER SEX PAGE, owned and operated by JOHN TROYER, is a free World Wide Web site on the Internet that contains information and educational materials about safer sex, including articles about how to protect against HIV/AIDS. Mr. Troyer is a resident of Oakland, California.

18. Intervenor BANNED BOOKS ON-LINE, owned and operated by JOHN OCKERBLOOM, is a site on the World Wide Web which provides the full text of many books that have been the objects of censorship or censorship attempts throughout history. For example, Banned Books On-Line provides a full text copy of James Joyce's *Ulysses*, Voltaire's *Candide*, John Cleland's *Fanny Hill*, and Chaucer's *Canterbury Tales*. Mr. Ockerbloom is a doctoral student in computer science at Carnegie Mellon University, and resides in Pittsburgh, Pennsylvania.

19. Intervenor AMERICAN ASSOCIATION OF UNIVERSITY WOMEN MARYLAND (AAUW Maryland) is an unincorporated association founded in 1942 with twenty-five branches and over 1200 individual members. AAUW Maryland promotes equity, education, self-development over the life span, and positive societal change, for all women and girls. AAUW Maryland is an organizational unit of the national American Association of University Women, which also works to remove barriers and develop opportunities to enable women and girls to reach their full potential. AAUW Maryland has a free site on the World Wide Web which publicizes its activities, solicits new members, provides information about the national AAUW, and provides links to other Web sites with information about women's issues. AAUW Maryland sues on its own behalf and on behalf of its members.

20. Intervenor ROB MORSE is a lead columnist for The San Francisco Examiner, a mainstream newspaper with a circulation of 125,000 daily and 650,000 Sunday in the San Francisco metropolitan area. More than four hundred columns by Mr. Morse on subjects from urban violence to human cloning are available for free on a Web site for The San Francisco Examiner called The San Francisco Gate. Mr. Morse resides in Mill Valley, California.

21. Intervenor BOOKS FOR GAY AND LESBIAN TEENS/YOUTH PAGE, owned and operated by JEREMY MEYERS, is a free site on the World Wide Web which lists books that may be of interest to gay and lesbian youth. Mr. Meyers is an 18-year-old high school student who resides in New York City, New York.

22. Intervenor SERGIO ARAU is a Mexican painter, composer, and musician who lives in Los Angeles, California, and who has been called one of Mexico's most diversely talented artists. Several of his paintings are available for free viewing on the World Wide Web.

23. Intervenor RENAISSANCE TRANSGENDER ASSOCIATION ("Renaissance") is a non-profit corporation which provides support to transgendered individuals and those close to them, and comprehensive public education about transgender behavior. Renaissance has approximately 350 members, four chapters, and eleven affiliates in ten states. Renaissance has a free site on the World Wide Web which provides information about the organization and its activities, educational material about transgender issues, and information about how to start a local support group. Renaissance is incorporated in Pennsylvania, and its principal place of business is in Wayne, Pennsylvania. Renaissance sues on its own behalf and on behalf of its members.

24. Intervenor THE ETHICAL SPECTACLE is a non-profit corporation that publishes a free online magazine called The Ethical Spectacle on the World Wide Web. The Ethical Spectacle examines controversial issues of ethics, law and politics in America, including articles opposing online censorship laws such as the Communications Decency Act, and opposing the use of blocking software in public libraries. The Ethical Spectacle is incorporated in New York, and has its principal place of business in New York City.

25. Defendant Board of Trustees of the Loudoun County Public Library ("the Board") is a government entity responsible for oversight of the Loudoun County Public Library ("the Library") and which adopted the Policy at issue in this case. Defendants John J. Nicholas, Jr., Spencer D. Ault, Richard H. Black, Chris Howlett and Mary Ellen VanNederyn are members of the Board who voted to adopt the Policy. Defendant Nicholas is the Board's Chairman. Defendant Douglas Henderson is the Director of Library Services and is responsible for the operation of the Library and implementation of the Policy. The individual Board members are sued here in their official and personal capacities. Defendant Henderson is sued here in his official capacity.

## Facts

### The Nature of the Internet

26. The Internet is "an international network of interconnected computers . . . which enable[s] tens of millions of people to communicate with one another and to access vast amounts of information from around the world." 117 S. Ct. at 2334. It "may well be the premier technological innovation of the present age." American Library Ass'n v. Pataki, 969 F. Supp. 160, 161 (S.D.N.Y. 1997). In 1997, the Supreme Court affirmed a three-judge court's extensive findings of fact about the Internet. Reno v. ACLU, \_\_\_ U.S. \_\_\_, 117 S. Ct. 2329 (1997), aff'g ACLU v. Reno, 929 F. Supp. 824 (E.D. Pa. 1996). The majority of the facts about the Internet asserted in this Complaint are taken from the findings of fact in Reno v. ACLU.

27. While estimates are difficult due to its constant and rapid growth, the Internet is currently believed to connect more than 159 countries and over 100 million users.

28. 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.

29. 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.

30. The Internet is an invaluable information source and communication tool which is used by millions of users in innumerable ways. Minors, for example, use the Internet to do school homework and to seek information about extracurricular interests and hobbies.

31. The best known category of communications over the Internet is the World Wide Web, which allows users to search for and retrieve information stored in remote computers. In concrete terms, the Web consists of a vast number of documents stored in different computers all over the world.

32. The Web currently contains over 100 million documents, with thousands of documents added to the Web each day. Because of the ease with which content is added and manipulated on the Web, the content on existing Web sites is constantly changing.

33. Unlike most computer database systems, the computers on the Internet are linked together into a single whole. Links from one computer to another and from one document to another across the Internet, are what unify the Web into a single body of knowledge, and what makes the Web unique.

34. 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, researchers, and buyers. Any person or organization with a computer connected to the Internet can "publish" information. Publishers include government agencies, educational institutions, commercial entities, advocacy groups, and individuals. On the Internet, any person with a phone line can become a pamphleteer.

35. Once a provider posts content on the Internet, it is available to all other Internet users worldwide.

36. To gain access to the information available on the Web, a person uses a Web "browser" -- software such as Netscape Navigator or Microsoft's Internet Explorer -- to display, print and download documents. Each document on the Web has an address that allows users to find and retrieve it.

37. Most Web documents also contain "links." These are short sections of text or image that refer and link to another document. Typically the linked text is blued or underlined when displayed, and when selected by the user on the computer screen, the referenced document is automatically displayed, wherever in the world it actually is stored.

38. A variety of systems allow users of the Web to search for particular information among all of the public sites that are part of the Web. Services such as Yahoo, Magellan, Alta Vista, Webcrawler, Lycos and Infoseek provides tools called "search engines." Once a user has accessed the search service she simply types a word or string of words as a search request and the search engine provides a list of sites that match the search string.

39. Sexually oriented material is available on the Internet, but such material includes far more than what might be characterized colloquially as "pornography." As the Supreme Court noted, it includes nudes by Edward Weston and Robert Mapplethorpe, safer sex instructions, the seven "dirty words" used in the FCC v. Pacifica monologue, discussions about prison rape and human rights abuses, and arguably the card catalogue of the Carnegie Library. 117 S. Ct. at 2336, 2344, 2348.

40. Sexually oriented material on the Internet also includes the speech of intervenor The Safer Sex Page, which provides detailed information about safer sex, written in language that teenagers will understand; Banned Books On-Line, which provides the full text of books that have in the past been subject to censorship efforts, such as Fanny Hill: Memoirs of a Woman of Pleasure; and intervenor Sergio Arau, who exhibits paintings on the Web that contain some partially nude figures.

41. 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. Almost all sexually oriented images are preceded by warnings as to content. For that reason, the odds are slim that a user would enter a sexually oriented site by accident.

42. The Internet provides information on topics that might be considered offensive or harmful by some. For example, intervenor Jeremy Meyers has a Web site listing "Books for Gay and Lesbian Teens/Youth." Intervenor The Ethical Spectacle is an online magazine that discusses controversial issues such as human experimentation conducted at Auschwitz, the Nazi extermination camp.

43. The Internet also provides information on topics that are sensitive or involve personal information. For example, intervenor Renaissance Transgender Association has a Web site that discusses transgender issues. In addition, the Internet provides information about mental health, drug dependency, and medical conditions such as infertility and impotency.

44. Just like printed books, the Internet is a medium of speech entitled to full First Amendment protection. In *Reno v. ACLU*, the Supreme Court struck down on First Amendment grounds the "indecent" provisions of the Communications Decency Act. Applying strictest constitutional scrutiny, the Court held that there was "no basis for qualifying the level of First Amendment scrutiny that should be applied" to the Internet. 117 S. Ct. at 2344.

#### Internet Access at Public Libraries

45. The Internet is becoming the library of the future. 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 . . . ." 117 S. Ct. at 2335.

46. Electronic resources provide unprecedented opportunities to expand the scope of information available to users in public libraries.

47. For the many people who cannot afford a personal computer, Internet access terminals at public libraries may be their only means of accessing the Internet. Despite the low cost barriers to Internet access, the Internet is still primarily used by the affluent, with only eighteen percent of users making less than \$25,000.

48. In 1995, the National Telecommunications and Information Administration (NTIA) of the United States Department of Commerce concluded that "public institutions will play a critical role in assuring public access to the economic and social benefits of the Information Age, especially for those who do not have computers at home." The NTIA report concluded that "public libraries can play a vital role in assuring that advanced information services are universally available to all segments of the American population on an equitable basis. Just as libraries have traditionally made available marvels and imagination of the human mind to all, libraries of the future are planning to allow everyone to participate in the electronic renaissance."

49. There are many documents which are now produced only in electronic form and not in print. A growing number of government documents are no longer available in paper form but are accessible on the Internet. For such documents, accessibility by the public requires Internet access. Most government publications that would otherwise only be available to the public in federal depository libraries are now available to all Internet users as a result of the 1993 Government Printing Office Electronic Access Act.

50. Libraries are used by a large segment of Americans. 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 that time.

51. A recent survey revealed that more than 60 percent of the nation's 8,900 libraries now offer public access to the Internet (up from nearly 28 percent in 1996).

52. People who may have Internet access elsewhere may nevertheless prefer to access sensitive, controversial, and personal information on the Internet at the library 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 or at work.

#### Internet Blocking Software

53. Blocking software is computer software that is configured to block certain Internet sites that would otherwise be accessible by all Internet users.

54. Although there are several types of blocking software, one popular type is known as stand-alone proprietary blocking software. This software is installed on computers that have access to the Internet, and works in conjunction with a Web browser to block information and sites on the Internet that would otherwise be available. Most stand-alone blocking software blocks sites based on criteria provided by the blocking software vendor.

55. To conduct site-based blocking, a software vendor establishes criteria to identify specified categories of speech on the Internet and configures the blocking software to block sites containing those categories of speech. Some Internet blocking software blocks

as few as six categories of information, while others block up to 29 or more categories. Blocked categories may include hate speech, criminal activity, sexually explicit speech, "adult" speech, and violent speech. Some of the blocked categories express disapproval of a particular viewpoint, such as a category that blocks all information about "alternative" lifestyles such as homosexuality.

56. Using the criteria, the software vendor compiles and maintains lists of "unacceptable" sites. Some software blocking vendors employ individuals who browse the Internet for sites to block. Other blocking software vendors use automated searching tools to identify which sites to block. These methods may be used in combination.

57. Blocking software vendors generally treat their blocking criteria as a trade secret. Accordingly, most vendors do not reveal their list of blocked sites. Blocking software vendors must update their list of blocked sites constantly to keep up with the rapidly increasing and changing content available on the Internet. Many blocking software vendors charge an additional fee to provide regular updates of the software to customers.

58. All blocking software depends on the exercise of subjective human judgment by the software vendor to decide what speech is acceptable and what is unacceptable.

59. Blocking software blocks 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.

#### Development of The Loudoun County Library's Internet Policy

60. The Loudoun County public library system serves the population of Loudoun County, Virginia through six branches as well as outreach services. Library branches are located in Leesburg, Cascades, Purcellville, Sterling, Lovettsville and Middleburg. In 1997, approximately 966,000 citizens visited Loudoun County libraries and checked out more than 1.7 million books, magazines, videos, audio cassettes and compact discs.

61. In November 1997, the Library began to offer Internet access through nine public terminals located at the six branches.

62. On October 20, 1997, the Board voted to adopt the current "Policy on Internet Sexual Harassment" ("the Policy"). The Policy was adopted by a vote of 5 to 4. A copy of the Policy is attached hereto.

63. The Policy provides that Internet blocking software designed to block specific sites on the Internet "will be installed on all computers."

64. The Policy states that the blocking software will "to the extent technically feasible" block "child pornography and obscene material (hard core pornography)" and "material deemed Harmful to Juveniles under applicable Virginia statutes and legal precedents (soft

core pornography)." It also states that "Patrons will not be permitted to use the Internet to access pornography."

65. The Policy does not define the terms "child pornography," "obscene material," "hard core pornography," "material Harmful to Juveniles," or "soft core pornography," or "pornography."

66. The Policy states that the Library's computers will be placed "in close proximity to, and in full view of, library staff" so that staff can monitor use of the Internet by Library patrons.

67. The Policy asserts that allowing Library patrons unrestricted access to the Internet could create a sexually hostile environment in violation of Title VII of the Civil Rights Act of 1964.

68. The Policy does not allow any patron, adult or minor, to access the Internet without blocking software under any circumstances. Even with the blocking software, library users under age 18 must obtain written permission before using the library Internet terminals.

69. Library patrons who seek to access prohibited information under the Policy will be told by library staff that they are in violation, and if they continue, will be told to leave the library. If such patrons do not leave, the Policy states that they will be considered in trespass and police will be called to remove them from the premises.

#### Implementation of the Policy

70. In late November 1997, the Library Director selected a vendor for blocking software and installed the software on library computers before making Internet access available to the public in the Loudoun County Library system.

71. The library administration installed blocking software called X-Stop. X-Stop is a product created and sold by Log-On Data Corporation ("Log-On"), whose principal place of business is located at 4175 East La Palma Avenue, Suite 130, Anaheim, CA 92807. Promotional material for Log-On Data Corporation states that all management personnel of the company are graduate engineers, scientists, or researchers.

72. The version of X-Stop installed on library computers is designated "X-Stop 95/NT v.3.0."

73. X-Stop blocks speech on the Internet through site-based blocking. According to promotional material, Log-On adds Web sites to its blocking list for X-Stop by use of a computerized searching program it calls MudCrawler. Log-On describes MudCrawler as a "proprietary automation system" that is "a combination of virtual entities that Log-On Data Corp. has perfected to search the Internet for hard-core pornography and other offensive addresses." Promotional material states that "comprehensive identification of

all hard-core pornographic Internet sites remains impossible without the use of automation." The company claims that X-Stop has the largest available hard-core pornography and other offensive site blocking library. Promotional material for Log-On states that X-Stop "is not a filter but a combination of 16 technological devices which effectively and reliably screen out hard-core pornography and other offensive sites on the Internet."

74. The rating system used by Log-On to implement X-Stop blocking software is proprietary and is a trade secret of Log-On. Log-On claims to access thousands of new Web sites each week to add sites to its blocked list.

75. Promotional material for Log-On claims to have created a library of blocked sites that includes "over 50,000 in the categories included in the librarian version of X-Stop." Promotional material for Log-On asserts that the librarian edition of X-Stop "is equipped only with the 'felony load' of blocked addresses, so that only sites qualifying under the Miller [v. California] standard are blocked." Promotional material for Log-On claims that the librarian edition of X-Stop only blocks Web sites that show sexual acts, bestiality, and child pornography. It claims that "[l]egitimate art or education sites are not blocked by the library edition, nor are so-called 'soft porn' or 'R'-rated sites."

76. X-Stop, and not defendants, select which sites the site-based feature of the blocking software will block. Because X-Stop considers its blocked sites list to be proprietary, the company has not provided the list to defendants.

77. Library patrons who seek to access a Web site that is blocked by X-Stop receive a message that reads "Violation!! Violation!! Violation!! Access to this site has been blocked. Please click on your bookmark or go to some other Website, Contact your Internet or Network Coordinator if you believe this site should not be blocked. X-Stop 95/NT - the Filter. X-Stop, division of Log-On Data Corp."

78. The library staff makes available a "Request to Review Blocked Site" form for library patrons who think that an Internet site has been improperly blocked. Patrons are advised that they may fill out the form and submit it to a reference librarian. The form calls for the name, library bar-code and phone number of the library patron and requires that the patron specify the address (called the URL) of the blocked Web site and to list specific reasons for objecting to the block.

79. Library patrons have been told that the library's policy does not permit immediate removal of a block on a site that has been inappropriately censored. Patrons have been informed that they must fill out the "Request to Review Blocked Site" form and submit it to the library staff. One patron filled out a form requesting that the Town Hall Web site, a Web site with information about conservative political views, be unblocked. In the space on the form requiring the patron to list her specific reason for objecting to the block, the patron wrote, "Town Hall provides important political information from conservative viewpoint groups including the Christian Coalition and the Family Research Council." When the patron turned in the form to the librarian, she was told that "there is no rhyme

or reason" to what X-Stop blocks. The patron was told that the librarian would forward the "Request to Review Blocked Site" to Log-On Data Corporation.

80. Corey Hooper, a regional sales manager for Log-On, acknowledged recently in The Washington Post that X-Stop "still blocks out more Internet sites than it should." "Web Filter Can't Block Criticism," The Washington Post, January 11, 1998, B1. Douglas Henderson, the Loudoun County Library Director, said in the same article that "he knew that X-Stop wouldn't be 100 percent effective." Id. The Washington Post reported that Henderson's "own test of a sample of Web sites found that the software allowed pornographic sites to get through and blocked 57 sites that did not contain anything objectionable." Id.

#### The Impact of the Policy on Intervenors

81. Intervenors want the widest possible audience for their online speech. They want to be able to communicate their free information to interested people who may not have Internet access at home or at work, including people who are patrons of the Loudoun County Library.

82. None of the intervenors provides speech that is obscene or otherwise constitutionally unprotected.

83. Intervenors believe that their speech has educational, political, literary, artistic and social value for both adults and minors.

84. As verified in the Loudoun County Library on February 2, 1998, defendants currently block the online speech of intervenors The Safer Sex Page, American Association of University Women Maryland, Rob Morse, Books for Gay and Lesbian Teens/Youth, Sergio Arau, Renaissance Transgender Association, and The Ethical Spectacle from reaching patrons in the library through their use of the blocking software X-Stop. In December 1997, X-Stop blocked the entire Web site of Intervenor Banned Books On-Line; currently, defendants block a link from Banned Books On-Line to the book "E for Ecstasy" (a book which has nothing to do with sex and is about an illegal drug) through their use of the blocking software X-Stop.

85. Defendants currently block the viewpoints that intervenors express in their Web sites, including the promotion of safer sex practices, acceptance and support for gay and lesbian youth, the promotion of career opportunities for women, acceptance and support for transgendered persons, and the opposition of censorship and the use of Internet blocking software.

86. Defendants do not block a variety of sites that express viewpoints contrary to the viewpoints expressed by Intervenors in their Web sites. For example, defendants do not block sites opposing homosexuality and transgender behavior, opposing employment by women outside the home, favoring Internet censorship, and promoting abstinence rather than safer sex practices.

87. Even if X-Stop were to unblock their sites after the instigation of this litigation, Intervenor would legitimately fear that defendants would block their sites from reaching patrons in the future, either because X-Stop would block their sites again in the future, or because defendants would switch to another blocking product that blocked their sites.

88. Intervenor, who are either non-profit organizations or individuals who maintain free Web sites in their spare time, have no feasible way to determine whether a particular blocking software program blocks their speech. Intervenor do not have the time and money required to monitor constantly the blocking or unblocking of their sites from a variety of different products that defendants and thousands of other libraries around the country may use.

89. Even if intervenors could somehow continue to determine whether their speech is currently blocked from reaching patrons in Loudoun County, they have no way (absent this litigation) to challenge the blocking of their sites. Intervenor all reside in other states, and could not get the necessary library card to enable them to access the Internet at the library or to fill out the "Request to Review Blocked Site" form.

90. Intervenor believe that library patrons interested in their speech may be deterred from filling out the "Request to Review Blocked Site" form because the sites contain sensitive, controversial or personal information, because of the stigma of filling out a form that seeks access to a site that violates the Policy, because of the stigma of having to justify why they need access to the site, or because they need the information immediately.

91. If public libraries around the country continue to use blocking software, intervenors may be forced to self-censor in order to avoid being blocked in libraries. Users can and should decide for themselves whether to use blocking software in the home. Intervenor believe, however, that the government may not prevent users in public libraries from accessing the speech of Intervenor and other constitutionally protected Internet speakers through the use of blocking software.

The Safer Sex Page, owned and operated by John Troyer

92. Intervenor The Safer Sex Page, owned and operated by John Troyer, is a large site on the Internet's World Wide Web that offers free educational information on how to practice safer sex. John Troyer is a senior scientist in the field of bioinformatics who in his spare time created and maintains The Safer Sex Page. The Safer Sex Page, which includes the equivalent of approximately one hundred printed pages of information, is accessed by more than 20,000 people around the world every week.

93. The Safer Sex Page includes brochures about safer sex, HIV transmission, and condoms, as well as resources for health educators and counselors. The information is indexed to facilitate research and retrieval. In this age of AIDS, Mr. Troyer believes The Safer Sex Page can help save lives by providing information about safer sex practices.

The Safer Sex Page also provides information helpful in avoiding other sexually transmitted diseases and unwanted pregnancy.

94. The Safer Sex Page includes a wide array of sex education materials from dozens of sources; brochures include graphics, audio, and video. Some resources are written specifically for The Safer Sex Page, and other resources are based on information received from other groups including the Center for Disease Control, Planned Parenthood, the United States Department of Health and Human Services, and the Los Angeles Gay and Lesbian Community Services Center.

95. The Safer Sex Page includes the following articles: "Aids-Proofing Your Kids," by a group of doctors who wrote a book by the same name; "Update: Barrier Protection against Sexual Diseases," published by the Centers for Disease Control and Prevention in its Morbidity and Mortality Weekly Report; a series of articles about women and HIV infection, reprinted from the Veterans Administration AIDS Information Newsletter; and an article by the L.A. Gay & Lesbian Community Services Center about "Lesbian Safer Sex."

96. By their very nature, information and discussions about safer sex include explicit language and pictures. Postings include guidelines about the risks associated with different sexual acts. Explicitness is necessary to make safer sex materials comprehensible. The public health threat of unsafe sex demands that people know with specificity how to protect themselves.

97. Teenagers are an important audience for the resources offered through The Safer Sex Page. 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.

98. Because his Web site provides sensitive information about safer sex and AIDS, Troyer believes that some people may prefer to access his site at the public library 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.

99. Defendants currently block the entire Web site of The Safer Sex Page from reaching library patrons through their use of the blocking software program X-Stop.

100. Although defendants block The Safer Sex Page, which provides methods for protection during sex against sexually transmitted diseases, defendants do not block the "The Safest Sex Home Page," which promotes abstinence before marriage as the only protection against sexually transmitted diseases.

Banned Books On-Line, owned and operated by John Ockerbloom

101. Banned Books On-Line, owned and operated by John Ockerbloom, is a Web page that provides the full text of books that have been the subject of censorship efforts throughout history. Banned Books On-Line is part of a larger Web site known as The On-Line Books Page. John Ockerbloom is a doctoral student in computer science at Carnegie Mellon University (CMU), and resides in Pittsburgh, Pennsylvania. He successfully defended his dissertation in January 1998 and will be receiving his Ph.D. shortly. While doing preliminary research for his thesis in 1993, Mr. Ockerbloom learned about the World Wide Web and set up Web service for the CMU School of Computer Science.

102. In 1993, Mr. Ockerbloom created a Web site called The On-Line Books Page, a directory of books that allows users to read the full text of each book for free on the Internet. The books themselves are mostly prepared by other projects and by individuals, and are all legitimately available at no charge. (The page offers primarily books that are not copyrighted, and some books for which the copyright holder has granted permission for free personal, noncommercial on-line use).

103. As part of the On-Line Books Page, Mr. Ockerbloom built a database that allows users to search for particular books, and to browse the available books in various ways. Currently the On-Line Books Page lists over six thousand complete books that can be read on-line without charge. The On-Line Books page is accessed approximately thirty thousand times per week.

104. Although the On-Line Books Page resides on a computer at CMU, Mr. Ockerbloom has sole control of the content of the pages. He maintains the pages as a personal project and as a service to the online community. The On-Line Books Page works with The Universal Library Project of CMU, whose mission is to start a worldwide movement to make available on the Internet all the authored works of humankind so that anyone can access these works for free from any place at any time.

105. In 1994, Mr. Ockerbloom added a set of pages to the On-Line Books Page entitled "Banned Books On-Line." He added these pages in part as a statement of opposition to CMU's decision to censor certain content on the university computer network. The Banned Books On-Line pages were meant to demonstrate to the university that the terms of its censorship policy would also result in the banning of many well-known books that are freely available in print at the CMU library and elsewhere. Mr. Ockerbloom believes that electronic books deserve the same strong protection from censorship granted to print books.

106. Banned Books On-Line lets Internet users read for themselves books that have been suppressed at various times and places throughout history. The pages are accessed more than 7000 times per week. The pages offer the full text of over thirty books that have been the object of censorship or censorship attempts. The featured books are selected from the indexes of the On-Line Books Page. The books include:

- Ulysses, by James Joyce, which was barred from the United States as obscene for 15 years, and was seized by U.S. Postal Authorities in 1918 and 1930.

- Candide, by Voltaire, which was seized in 1930 by U.S. Customs agents.
- Fanny Hill, by John Cleland, for which a New York bookseller was prosecuted under a law that prevented the sale of "harmful" material to a minor.
- Leaves of Grass, by Walt Whitman, which was withdrawn in Boston in 1881 after the District Attorney threatened criminal prosecution for the use of explicit language in some poems.
- The Rights of Man, by Thomas Paine, for which Paine was indicted for treason in England in 1792.
- Charles Darwin's Origin of Species, for which John Scopes was convicted in 1925 in Tennessee for teaching in his high school class.
- Mark Twain's Tom Sawyer and Huckleberry Finn, which have been challenged in libraries and on high school reading lists due to alleged racism in the texts.
- The Bible and The Qu'ran, which were banned from import in the Soviet Union from 1926 to 1956.
- Aristophanes' Lysistrata, Chaucer's Canterbury Tales, Boccaccio's Decameron, Defoe's Moll Flanders, and various editions of The Arabian Nights, which were banned for decades from U.S. mails under the Comstock Law of 1873.

107. All of the books on the Banned Books On-Line pages are routinely available at libraries and in bookstores around the country.

108. Mr. Ockerbloom believes that the books on the Banned Books On-Line Web site all have literary, scholarly, or documentary value for both adults and minors. In addition to offering the full text of these books, he believes the site offers important documentation of past and present censorship efforts. He believes that the books should be available to all users of the Internet, including patrons of the Loudoun County Library.

109. In October 1997, Mr. Ockerbloom learned that the blocking software X-Stop blocked the entire Banned Books On-Line Web site. To verify this, he called the company, and spoke with a Vice President. The Vice President told Mr. Ockerbloom that his site was "originally blocked," probably via "their automated system," and that they were "temporarily guilty as charged." He said that X-Stop had either already unblocked the site or would unblock it soon.

110. As of February 2, 1998, defendants still block one of the books on the Banned Books On-Line Web site. Defendants block E for Ecstasy, by Nicholas Saunders, a book about the history of the drug MDMA and the author's experiences using the drug. Although the book is blocked, it contains nothing that could remotely qualify as "pornography."

111. Given the arbitrariness with which defendants have blocked and unblocked portions of the Banned Books On-Line Web site through their use of the blocking software X-Stop, Banned Books On-Line fears that defendants may block existing or newly added books on the site in the future from reaching patrons in the Loudoun County Library.

112. Although defendants block information on the Banned Books On-Line Web site, which celebrates the availability of books that have previously been censored, defendants do not block a Web page targeting "Banned Books Week" as an exercise in propaganda.

#### American Association of University Women Maryland

113. The American Association of University Women Maryland (AAUW Maryland) has a Web site which provides information about its activities to promote equity for women. AAUW Maryland is the Maryland state affiliate of the national American Association of University Women, founded in 1881, which has over 160,000 members.

114. The AAUW Maryland Web site provides information about AAUW Maryland and about the national AAUW. The Web site discusses AAUW's leadership role in civil rights issues; work and family issues such as pay equity, family and medical leave, and dependent care; sex discrimination; and reproductive rights. There is also information about fellowships and grants available through the AAUW Educational Foundation, which has provided financial assistance to more than 6,500 women striving to reach personal and professional goals. The Web site also provides information about the AAUW Legal Advocacy Fund, which provides funds and a support system for women seeking judicial redress for sex discrimination in higher education.

115. AAUW Maryland uses its Web site as a membership recruitment tool. Regular membership is open to anyone who holds a baccalaureate degree from an accredited university. Undergraduate students may also join as student affiliates. AAUW Maryland has had an increase in membership through Web contacts.

116. AAUW Maryland branch members sometimes act as mentors to students during the college years. If a student from another state, such as nearby Virginia, were interested in becoming an affiliate in a branch near their college or university, the AAUW Maryland Web site could direct them to an appropriate contact.

117. The AAUW Maryland Web site has a "Hot List" of links to other online resources for women. Persons who are interested in the activities of women's organizations throughout the country can access the AAUW Maryland Web site for information and personal contacts.

118. AAUW Maryland is opposed to censorship. In a 1983 Resolution, AAUW stated that "AAUW vigorously resists any attempts, whether by special interest groups, branches of government, or other sources, to ban or censor books or other media." In support of its mission to support educational equity for women, AAUW has stated that it "believes that public education is the foundation of a democratic society. We advocate equity, academic freedom, protection from censorship, bias-free education, and responsible funding for all levels of education." Because public libraries provide free educational resources to citizens who may otherwise lack access to them, AAUW is opposed to any censorship of books or other information resources in libraries because of disagreement with their content or viewpoint.

119. AAUW Maryland believes that the resources offered through its Web site provide valuable information and support to women who may need financial help in getting through college or in pursuing a sex discrimination claim against a university; girls seeking participation in AAUW educational programs; people who want to network with other women's advocates; and many others. AAUW Maryland believes that its Web site should be freely available to all Internet users, regardless of their age, including patrons at the Loudoun County Library.

120. Although the AAUW Maryland Web site contains no "pornography" or sexually explicit material of any kind, defendants currently block the Web site from reaching patrons in the library through their use of the blocking software X-Stop.

121. Although defendants block the Web site of the American Association of University Women Maryland, which promotes equal education and employment opportunities for women, defendants do not block the Web site of "Concerned Women for America," which discourages women from working outside the home.

Rob Morse

122. Intervenor Rob Morse is a lead columnist for The San Francisco Examiner. Mr. Morse's columns have received critical praise and honors, including in 1996 the Best of the Rest award for Immigration and Minority Affairs Reporting, and the First Place in Columns and Commentary award from the California Newspaper Publishers Association.

123. More than four hundred columns written for The San Francisco Examiner by Mr. Morse are available online for free at a Web site called The San Francisco Gate ("the Gate"). The Gate provides access to information ranging from news, entertainment, technology, business, and travel information about the San Francisco area. The San Francisco Examiner is one of the many publications providing public access to their information through the Gate Web site. Archived articles published in The San Francisco Examiner, including those written by Mr. Morse, are available online through the Gate. The Gate Web site is accessed two and a half million times per week.

124. Mr. Morse writes a daily column on a variety of issues ranging from national politics, homelessness, urban violence, computer news, and the Superbowl, to human cloning. Recent columns available on the Gate include "The Unsinkable Bill," a column about the recent investigation by Independent Counsel Kenneth Starr into allegations of illegal conduct committed by President Clinton; "All the Non-News Fit to Print," a review of the nation's top news stories; and "Death-Qualified Man Walking," an article about Theodore Kaczynski, who pled guilty to charges arising out of the "unibomber" case.

125. Mr. Morse believes that his columns should receive the same level of First Amendment protection when published online that they receive when published in the printed newspaper. Just as adults and minors may read his columns in the printed version

of The San Francisco Examiner, adult and minor patrons at the Loudoun County Library should be able to read the same columns on the Internet.

126. Defendants currently block Mr. Morse's columns on the Gate from reaching patrons in Loudoun County through their use of the blocking program X-Stop.

Books for Gay and Lesbian Teens/Youth, owned and operated by Jeremy Meyers

127. Intervenor Books for Gay and Lesbian Teens/Youth is a free Web site that provides information about books of interest to gay and lesbian youth. The site was created and is maintained by Jeremy Meyers, an 18-year-old senior in high school who lives in New York City. Mr. Meyers has been using computers for over ten years, and has been communicating on the Internet since 1992.

128. In addition to maintaining the Books for Gay and Lesbian Teens/Youth Web site, Mr. Meyers is a volunteer for the SAFETeen Project, which is a group of online peer counselors for gay, lesbian, bisexual, and questioning youth. This group provides peer counseling services for "teens in trouble" via the Internet. Mr. Meyers believes that this project is important because he has seen the social prejudices against gay and lesbian youth and the devastating effect they can have. Teenaged people go through many very emotional states, and when one is gay or lesbian, the combination of powerful emotions with social prejudice may lead to regrettable action, including suicide. Mr. Meyers believes that no one should have to experience social prejudice, especially teenagers who are just learning about their own identity and should not be suppressed in this way.

129. The Books for Gay & Lesbian Teens/Youth Web site lists approximately forty books that may be of interest to gay and lesbian youth. Mr. Meyers compiled the list from a booklist he obtained from Lambda Rising, a bookstore chain with stores in major cities throughout the United States. He developed the list in response to a lack of widely-available information about books on this subject. The information was available on very few Web sites, and was not easily retrievable. Mr. Meyers felt that the information should be consolidated into one easy-to-use Web site.

130. The Books for Gay & Lesbian Teens/Youth Web site contains a brief description of the subject of each book, and in some cases provides a link to a commercial Web site (not controlled by Mr. Meyers) at which users can purchase the book over the Internet. The book list includes the following books:

- AIDS: Trading Fears for Facts: A Guide for Young People, by Karen Hein et al.
- Annie on My Mind, by Nancy Garden (chosen by the American Library Association as one of the Best of the Best Books for Young Adults).
- Death by Denial: Studies of Suicide in Gay and Lesbian Teenagers, by Gary Remafedi.
- Two Teenagers in Twenty: Writings by Lesbian and Gay Youth, by Ann Heron (a collection of first-hand accounts of what it is like to be a gay teenager).

- Understanding Sexual Identity: A Book for Gay and Lesbian Teens, by Janice Rench.
- When Someone You Know Is Gay, by Sudan and Daniel Cohen (a book written for straight teenagers on the subject of homosexuality).
- Coming Out To Parents: A Two-Way Survival Guide for Lesbians and Gay Men and Their Parents, by Mary V. Borhek.

131. Mr. Meyers believes that the site is an important resource for gay and lesbian youth, who may not know where to find reliable information regarding issues of sexual orientation. Mr. Meyers believes providing this information and support can help gay and lesbian youth through a particularly difficult part of their lives. With statistics showing that teenage suicide is much higher among gay and lesbian youth than among other teenagers (some statistics report that thirty-three percent of teen suicides are gay and lesbian youth), the information could in fact save lives.

132. Gay, lesbian and bisexual persons continue to suffer personal harassment as a result of social prejudice. Because of this, Mr. Meyers believes that some people, especially teenagers, may prefer to access sites dealing with sexual orientation at the public library 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. Having information about such books at a library may also provide a place to read the books in an environment free of social prejudices and the personal pressure of being "in the closet" with their parents.

133. Defendants currently block the "Books for Gay & Lesbian Teens/Youth" site from reaching patrons in the Loudoun County Library through their use of the software program X-Stop.

134. Although Defendants block the Books for Gay and Lesbian Teens/Youth Web site, which provides support to the gay and lesbian community, Defendants do not block Web pages sponsored by groups like the American Family Association (AFA) and the Family Research Council (FRC), which condemn homosexuality. AFA has a Web page entitled "Homosexuality in America: Exposing the Myths." FRC has a Web page entitled "Debunking the Myth of Gay Youth Suicide."

Sergio Arau

135. Sergio Arau is a Mexican painter, composer, and musician, popularly known as "El Padrino" (The Godfather) of the new Mexican music movement called "Rock en Español," which blends American rock n' roll with Mexican traditional music such as ranchero, bolero, and huapango. He has recorded several successful compact disks, including a recent release on Sony Records entitled "Mi Frida Sufrida" ("My Suffering Frida"). His paintings have been exhibited in numerous museums and galleries, including the Museo Rufino Tamayo in Mexico City.

136. Mr. Arau's visual art takes ideas from classical art work by Michelangelo and Caravaggio and infuses them with contemporary themes. As Paco Ignacio Taibo, a recognized Mexican writer, explained: "Arau's characters seem to fly between the Sistine Chapel and the Arena Coliseo [a famous wrestling arena in Mexico]." Both his music and his paintings reflect humor, irony, tradition and contemporary reality in a style he calls "realismo mitologico" ("mythological realism"). Running through all of Mr. Arau's art work is his desire to call attention to cultural elements in painting, film and music that have become so familiar that they are not recognized. Mr. Arau takes these everyday elements and elevates and frames them in order to call attention to them and to celebrate the culture-in-the-making.

137. Some of Mr. Arau's paintings are available for free viewing on the World Wide Web. In 1996, a free online Web magazine entitled "Foundry" featured Mr. Arau's work on its site. The Foundry Web site exhibits eighteen of Mr. Arau's paintings, connected by a text composed by Mr. Arau and his wife, Yareli Arizmendi. The text tells a short story in which some of the words of the story are linked to particular paintings by Mr. Arau. The project was designed to explore the possibilities of an interactive art show using narrative and visual art, and to provide the opportunity for direct audience participation.

138. Mr. Arau's work on the Foundry Web site is currently blocked by Defendants from reaching patrons in the Loudoun County Library through their use of the software program X-Stop.

139. Some of Mr. Arau's music is also available through free audio files on the World Wide Web. The same music is played on radio stations around the country. Some of the lyrics in Mr. Arau's music contain a form of speech known in Spanish as the "albur," which uses puns and words games that often involve sexual innuendo. Mr. Arau fears that Defendants may in the future block his music on the Web through their use of X-Stop or another blocking software program.

140. Mr. Arau believes that his visual art and music have artistic value for both adults and minors, and that all people, including patrons of the Loudoun County Library, should be able to view his artwork and to listen to his music on the Internet. Many of his fans are teenagers who can hear his music performed live, listen to his records on the radio, and see his art work in galleries.

#### Renaissance Transgender Association

141. According to its mission statement, the Renaissance Transgender Association ("Renaissance") seeks "to provide the very best in comprehensive education and caring support for transgendered individuals and those close to them." Renaissance has a free Web site on the World Wide Web which provides information about the organization and about transgender issues. Transgendered individuals include transvestites (people who dress like the opposite sex) and transsexuals (people whose gender identity is the opposite of their physical gender, and who may or may not seek gender reassignment surgery). Renaissance provides resources targeted primarily to male-to-female

transgendered people, but also provides a link to another Web site with information targeted to the female-to-male transgender population.

142. Renaissance board members include Dr. William R. Stayton (a noted therapist and sex educator, and current president of the American Association of Sex Educators, Counselors, and Therapists); Phyllis Frye (Executive Director of the International Conference on Transgender Law and Employment); and Dr. Carol Cobb-Nettleton (Director of Clinical Training at the Lasata Center, lecturer in Human Sexuality at the University of Pennsylvania, and Clinical Sexuality Consultant at The Children's Hospital of Philadelphia).

143. Transgendered individuals often experience feelings of isolation and guilt about their need to cross-dress or their desire to change their gender. Many transgendered people report that only after they became acquainted with other transgendered people did they begin to accept these conditions in themselves. The benefit of shared experiences often lead to understanding and acceptance, and may extend to the family members and friends of the transgendered.

144. The Renaissance Web site provides information about local support groups where individuals can find a safe space to learn about transgender behavior. The Web site provides detailed information about the activities of four chapters and eleven affiliates in ten states, including Pennsylvania, New Jersey, New York and Delaware.

145. In addition, the Renaissance Web site provides information about how to start, build, and maintain a local community transgender support group. This section of the site gives advice on how to reach other transgendered people in the community, where to look for a safe place to meet, how to minimize the possibility of outside harassment, and how to structure management of the group.

146. The Renaissance Web site also provides copies of several background papers on various transgender issues, including "Myths & Misconceptions about Crossdressers," "Reasons for Male to Female Crossdressing," "PARTNERS: Spouses and Significant Others," and "Telling the Children: A Transsexual's Point of View." The site also includes an annotated bibliography listing over fifty books of interest to the transgender community. Many of these books are available in libraries and bookstores across the country.

147. The Renaissance Web site also provides information on how to become a Renaissance member and how to subscribe to its print newsletter "Renaissance News & Views," which includes articles on gender-related social, political and legal issues, and provides basic information about events within the transgender community.

148. Renaissance believes that there is nothing in its site that could be construed as "pornographic" or sexually explicit.

149. Renaissance believes it is important that adults and minors have access to its Web site. Studies of transgender behavior show that it usually begins in childhood, and can lead to isolation and alienation if the young person is unable to obtain reliable information about transgender behavior or to connect with supportive individuals and professionals.

150. Transgendered persons continue to suffer harassment as a result of social prejudice. Because of this, Renaissance believes that some people may prefer to access its Web site at the public library 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.

151. Defendants currently block the Renaissance Web site from reaching patrons in the Loudoun County Library through their use of the software program X-Stop.

152. Although Defendants block the Renaissance Transgender Association Web site, which provides support to the transgender community, Defendants do not block Web pages that condemn transgender behavior.

#### The Ethical Spectacle

153. The Ethical Spectacle is a free online magazine that began in January 1995. Each issue of The Ethical Spectacle is approximately 20-30 pages. The purpose of The Ethical Spectacle is to address issues at the intersection of ethics, law, and politics in American life. The material in the newsletter is meant to provoke thought about these important issues.

154. Jonathan Wallace, a software business executive and attorney based in New York City, is the founder and publisher of The Ethical Spectacle. Mr. Wallace is also coauthor with Mark Mangan of a book entitled *Sex, Laws, and Cyberspace* (1996), which received much critical praise and is widely available in libraries and book stores around the country.

155. The Ethical Spectacle includes articles written by Mr. Wallace on a variety of subjects, including several articles opposing the Communications Decency Act and celebrating the Supreme Court's decision striking it down; an article entitled "President Clinton Should Resign," which was written in response to the Monica Lewinsky controversy, and an article entitled "No More 'Murder Around the Edges'--Ban Landmines Now," which opposes the United States' failure to sign an international treaty banning the use of landmines. The Ethical Spectacle also includes articles written by others, including an article by Jamie McCarthy entitled "An Open Letter to a University About Hate Speech;" and an article by Bob Wilson on welfare reform.

156. The Ethical Spectacle also includes a permanent exhibit called "The Free Speech Museum," which is intended to serve as a permanent Internet resource on the freedom of speech. The exhibit includes a "free speech dictionary," which includes entries from

"bomb recipes" to "flag burning" to "the seven dirty words;" a "gallery of indecency," which includes excerpts from famous works which were once accused of indecency or obscenity in the U.S. or elsewhere, but are now recognized to have significant literary, artistic, scientific or political value; and several essays on freedom of speech.

157. The Ethical Spectacle has also included a number of articles written by Mr. Wallace about the flaws in Internet blocking software, including "Purchase of Blocking Software by Public Libraries is Unconstitutional" (revised November 9, 1997), "Cyberpatrol: The Friendly Censor" (November 22, 1997), and "The X-Stop Files" (October 1997). Mr. Wallace's article "The X-Stop Files" discusses a number of Web sites blocked by the blocking software X-Stop, the blocking software used by Defendants. Mr. Wallace has exchanged several e-mail messages with Michael Bradshaw, the CEO of Log On Data Corporation, about "The X-Stop Files" article.

158. Defendants currently block The Ethical Spectacle from reaching patrons in the Loudoun County Library through their use of the blocking software program X-Stop.

159. Although defendants block an article in The Ethical Spectacle opposing the Communications Decency Act (CDA), defendants do not block a Web site sponsored by Enough is Enough, which contains arguments in support of the CDA.

160. The Ethical Spectacle has also been blocked in whole or in part by the blocking software programs Bess, CyberSitter, and CyberPatrol. Some of these products have unblocked The Ethical Spectacle due to Mr. Wallace's articles and protests, which have received some press attention.

#### CAUSES OF ACTION

161. Intervenors incorporate by reference paragraphs 1 through 160 above.

162. 47 U.S.C. §230(c)(2)(a) provides that "[n]o provider . . . of an interactive computer service shall be held liable on account of . . . any action voluntarily undertaken in good faith to restrict access to or availability of material that the provider . . . considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." The provision does not apply to this case. If it were interpreted to apply to this case, it would be unconstitutional.

163. The Policy violates the First and Fourteenth Amendments to the United States Constitution because it prevents intervenors and many other Internet speakers from communicating constitutionally protected speech to patrons in the Loudoun County Library.

164. The Policy is unconstitutionally overbroad, in violation of the First and Fourteenth Amendments, both because it blocks constitutionally protected communications to adults,

and because it blocks far more constitutionally protected expression to minors than possibly could be justified by any governmental interest.

165. The Policy is a content- and viewpoint-based restriction upon speech subject to strict scrutiny under the First Amendment.

166. The Policy fails to advance a compelling governmental interest, including defendants' purported interest with respect to sexual harassment. Allowing users of a public library to access the Internet without blocking software does not create a sexually hostile environment or otherwise violate Title VII of the Civil Rights Act of 1964, and a public library cannot be held liable under Title VII for allowing its patrons to access material on the Internet entitled to First Amendment protection.

167. The Policy is not narrowly tailored because it results in the blocking of protected speech, and it is not the least restrictive means of achieving any compelling government interest.

168. The Policy violates the First Amendment and the Due Process Clause of the Fifth and Fourteenth Amendments because it provides for suppression of speech without any judicial determination that the speech is obscene or otherwise unprotected by law.

169. The Policy violates the First Amendment and the Due Process Clause of the Fifth and Fourteenth Amendments because it provides for suppression of speech on the basis of determinations made by private, nongovernmental actors, and on the basis of automated computer software.

170. The Policy violates the First Amendment and the Due Process Clause of the Fifth and Fourteenth Amendments because it is vague.

Prayer for Relief

WHEREFORE, intervenors respectfully request that the Court:

- A. Declare that the Policy violates the First, Fifth and Fourteenth Amendments of the United States Constitution;
- B. Permanently enjoin defendants from enforcing the Policy's requirements;
- C. Permanently enjoin defendants from blocking Intervenors from communicating to patrons in the Loudoun County Library;
- D. Award intervenors such costs and fees as are allowed by law pursuant to 42 U.S.C. § 1988; and
- E. Grant intervenors such other and further relief as the Court deems just and proper.

Respectfully submitted,

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