

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

MAINSTREAM LOUDOUN, et al. )

)

Plaintiffs )

v. ) Case No. CA-97-2049-A

)

BOARD OF TRUSTEES OF THE )

LOUDOUN COUNTY LIBRARY, et al. )

)

Defendants. )

**DEFENDANT’S ANSWER TO MAINSTREAM LOUDOUN’S COMPLAINT**

COMES NOW Defendant Board of Trustees of the Loudoun County Library and as and for its Answer to the Complaint states as follows:

ANSWER 1. In response to the allegations of paragraphs 1-7, Defendant states that the paragraphs consist primarily of Plaintiff’s legal arguments which require no answer and are nonetheless denied to the extent they assert a basis for a claim for relief. To the extent that any of those paragraphs contain factual allegations, the allegations are denied except that Defendant admits the following specific facts:

- a) The policy adopted and implemented by Defendant seeks to preclude library patrons from accessing material that is not protected by the First Amendment, retrieval of which would constitute a violation of law;
- b) The policy adopted and implemented by Defendant does not preclude any library patron from accessing information that can be lawfully accessed over the Internet;
- c) to the extent that the policy adopted and implemented by the Defendant uses the same standards and procedures for adults as for non-adults, the policy is a lawful means of minimizing any risk of liability under applicable laws;
- d) the Policy adopted by the Defendant on October 20, 1997, speaks for itself and is neither arbitrary nor unlawfully restrictive.

2. In response to the allegation in paragraph 8, this Defendant is unable to admit or deny the allegation, in part because of the lack of specification as to the identity, time, place and manner of the alleged statement, and therefore denies the same.

3. In response to the allegations in paragraphs 9 through 11, Defendant admits the legal conclusions stated therein.
4. In response to the allegations in paragraphs 12 and 13, Defendant denies knowledge or information sufficient to form a belief and therefore denies the same. Defendant denies that Mainstream Loudoun has standing to litigate this claim.
5. In response to the allegation in paragraph 14, Defendant admits, on information and belief, the allegations of the first sentence of that paragraph and denies the remainder of the paragraph.
6. Defendant need not respond to the allegations in paragraphs 15, 16, 17, 18, 21, 22, 24 and 25 of the Complaint in light of the Court's Order of April 7, 1998.
7. In response to the allegations in paragraphs 19, 20 and 23, Defendant denies knowledge or information sufficient to form a belief as to the matters alleged therein except to deny that any of the individual defendants have been denied access to any material they have requested to access over the Loudoun Library Internet terminals.
8. In response to the allegation in paragraph 26, Defendant admits the allegations of the first sentence and need not answer the remaining allegations in light of the Court's order of April 7, 1998.
9. In response to the allegations in paragraphs 27 through 55, Defendant responds that the Complaint in many instances uses unique terminology that does not convey a universal meaning and thus Defendant lacks information or belief sufficient to respond. With respect to the numerous quotations from the decision in *ACLU v. Reno*, Defendant refers to the various published opinions for a complete and accurate statement of the contents thereof. Answering further, Defendant states as follows:
  - a) The Internet is a "network of networks" that links an unknown number of computers;
  - b) The Internet is not controlled, nor subject to control, by any single entity or combination of entities;
  - c) Given the existence of Internet-connected computers in the workplace, at the homes of friends and at other public or free locations, Defendant denies that the facilities of the Loudoun County Library constitute the only point of access to the Internet for anyone;
  - d) Defendant admits that the World Wide Web has become the most popular segment of the Internet and that the amount of material on the World Wide Web appears to be increasing;
  - e) Defendant admits that no material available over the Internet on the World Wide Web can be accessed by a user unless that user specifically requests that specific information be transmitted from a remote computer outside the Loudoun Library System to the patron's terminal;
  - f) Defendant admits the allegations of paragraphs 33 and 34;
  - g) Defendant does not know whether "most Web pages" are accessible without charge;
  - h) Defendant asserts that unfiltered access to the Internet will, as judicially noted by the Supreme Court, allow a user to access obscene material, child pornography and material that is harmful to minors, all within established judicial definitions of those terms;
  - i) Defendant asserts that the Policy it has implemented is neither designed to, nor does it, block access to sexually explicit material that is protected by the Constitution;
  - j) Defendant asserts that the Policy it has adopted and implemented does not block access to information described in paragraphs 42 and 43 of the Complaint, unless such material consists of obscenity, child pornography, or material deemed harmful to minors under applicable law.
10. In response to the allegations in paragraphs 46 through 55, Defendant states that the allegations are couched in such general terms as to preclude knowledge or information sufficient to respond thereto. Answering further, Defendant states that:

a) Defendant is not aware of any means of precluding access to the obscenity, child pornography and harmful to minors material that is available over the Internet other than through the use of some form of filtering software;

b) Defendant conducted a thorough search of the resources available at the time of the adoption and implementation of the Policy and chose to deploy the filtering software that, among all available software tools, was the least restrictive means available for precluding access to materials on the Internet that is not constitutionally protected;

c) Despite the thoroughness of Defendant's search, Defendant was aware of the inherent limitations in any filtering software and therefore supplements its use of filtering software with the ability to modify the filters to attain the proper filtration of only material that is not protected under the First Amendment. Defendant makes periodic changes to the filtering software to assure, as far as possible, the desired result. Those changes are implemented solely by Loudoun County Library personnel. Some of the changes respond to specific requests from patrons, while other changes are made spontaneously by Library personnel.

11. Defendant admits the allegation of paragraph 56.

12. In response to the allegations of paragraphs 57 through 59, Defendant states that written policies were adopted and refers to the policies themselves for an accurate statement of the terms thereof.

13. In response to the allegations of paragraphs 60 through 86, Defendant refers to the specific documents identified in those paragraphs for an accurate statement of the terms thereof.

Answering further, Defendant:

a) Admits that Douglas Henderson, at Defendant's request, has worked on the implementation of an Internet access system since at least as early as the spring of 1997;

b) Defendant admits that it met on the dates specified in paragraphs 61, 63, 70 and 74, and refers to the official minutes of those meetings for a proper description of what transpired;

c) Defendant admits that at the time of a survey conducted by the staff, no public library in the Commonwealth had adopted a policy that required the use of Internet filtering software;

d) Defendant denies that other libraries had not reported significant problems arising from allowing unfiltered access to the Internet;

e) Defendant admits that the Policy was adopted over the objection of Douglas Henderson;

f) Defendant denies that the Policy in effect requires that the police be called if a patron acts in violation of the Policy;

g) Defendant admits that the Policy, as currently implemented, does not allow any patron to deactivate or bypass the filtering software.

14. In response to the allegations in paragraphs 87 through 105, Defendant denies knowledge or information sufficient to respond to the various allegations about the technical details of the X-Stop software, except to state as follows:

a) The Library Director, after a thorough and diligent search, recommended that the Board purchase and install the Library Edition of X-Stop software since it was the best available software to implement the Policy;

b) On information and belief Defendant admits the first sentence of paragraph 88 of the Complaint and denies knowledge or information sufficient to form a belief as to the accuracy of the remaining allegations of that paragraph.

c) Defendant does not employ any form of search engine filtering software. All library patrons are able to use the same unfiltered search engines that are available to any other user of the Internet;

d) Defendant denies the relevance of admissibility of the hearsay statements of non-parties and refers to any published material for an accurate statement of the content thereof;

e) In response to the allegations in paragraph 105, Defendant denies that any of the Web sites identified in that paragraph is inaccessible from Loudoun Library terminals.

15. In response to the allegations in paragraphs 106 through 130, Defendant states that:

a) Library patrons who request use of the Internet terminals are required to receive and sign a policy and procedures statement. Defendant refers to the documents for a complete statement of the contents thereof;

b) Library patrons who desire to use the Library's Internet terminals are required to present , or obtain, a library user's card and to provide an independent means of identification;

c) Because use of the Internet terminals must be limited in order to fairly allocate use among library patrons, users are required to sign a reservation log which is a public document;

d) Library terminals and printers are physically placed in accessible areas for the benefit of patrons and staff who must support those terminals;

e) Defendant denies that the Loudoun Library system employs any "foul word blocking" technology;

f) Defendant denies specifically the allegations in paragraphs 120 through 125;

g) Defendant admits that there is no "banned word feature" on the on-line card catalog and states further that there is no "banned word feature" on the Loudoun Library Internet terminals either;

h) Defendant admits that with the limits of current technology it is not possible to design software that filters only material that is outside the protection of the First Amendment and states further that that technological fact is a primary reason for the existence of the User Request procedure;

i) Defendant denies that the procedure for requesting access to blocked sites precludes immediate removal of the filter and states that Library personnel are authorized to respond immediately to requests to remove blocks and can implement those requests, when appropriate, promptly;

j) Defendant denies that allegation that the use of the Request procedure is ineffective. Patrons of the Loudoun Library System are just as capable of learning of the existence of any Web site, including blocked sites, as any other user of the Internet since the Loudoun Internet terminals permit full, unfiltered access to all publicly-available Internet search engines.

16. In response to the allegations in paragraphs 131 through 145, Defendant states that those paragraphs contain only legal conclusions which need not be answered, but Defendant denies that the Loudoun County Library Internet Use Policy is unlawful either in its promulgation or in its implementation.

17. To the extent not otherwise answered, all allegations of the Complaint that are not specifically admitted are denied.

#### AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim on which relief may be granted.

2. Defendant is entitled to the absolute immunity provided in 47 U.S.C. § 230.

3. Defendant is entitled to absolute immunity under the doctrine of legislative immunity.

4. Plaintiffs lack standing to pursue this litigation.

5. Assuming, without admitting, that the First Amendment applies to this matter, the appropriate standard is not "strict scrutiny," but minimal scrutiny and the Policy adopted and implemented by the Defendant is a reasonable and the least restrictive means of accomplishing a lawful end,

prevention of the interstate transmission of obscene materials, child pornography and material harmful to minors.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed and Defendants awarded their costs and attorney's fees to the extent authorized by law.

Respectfully submitted,  
BOARD OF TRUSTEES  
OF THE LOUDOUN  
COUNTY LIBRARY.

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