The First Amendment Right to Receive Online Information in Public Libraries

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A decade after the Supreme Court of the United States upheld the Children's Internet Protection Act, which mandated Internet filters in public libraries, filtering problems have not been resolved, and the disabling of Internet filters upon the requests of adults does not seem to be as easy or automatic as the justices had presumed. In upholding CIPA, the Supreme Court seemed to misunderstand the parameters of the disabling provision, ignored the right-to-receive doctrine, and missed the opportunity to update public forum doctrine to include the Internet. This article concludes that the Court needs to reevaluate public forum doctrine in the context of twenty-first century technology and designate Internet access in public libraries as a metaphysical public forum.

For more than a century, the American public library's mission has been to serve the information and educational needs of society,\(^1\) with open and equal access for all patrons.\(^2\) For those needs to be served, patrons must have access to information. The First Amendment right of free speech has a corollary right that applies not only to society at large, but also to public libraries: the right to receive information and ideas. The Supreme Court of the United States has clearly recognized this right-to-receive doctrine in a line of cases, including the first two of the three library-cases it decided. However, the Supreme Court chose to ignore the right to receive doctrine in its third library case, United States v. American Library Association\(^3\) in 2003, when the Court upheld the Children's Internet Protection Act, even though the American Library Association argued in its brief that the case "fundamentally" involved the right of library patrons to receive online information.\(^4\) The lower federal court, which had struck down CIPA as unconstitutional, stated, "The right to receive information is vigorously enforced in the context of a public library."\(^5\)

Under the Children's Internet Protection Act of 2000, public libraries -- and most schools\(^6\) -- receiving federal funding are required to implement an Internet safety policy\(^7\) and install "a technology protection measure," such as blocking or filtering software, on all computers connected to the Internet to block or filter images that are obscene, involve child pornography, or are considered "harmful to minors."\(^8\) The safety policy requires libraries and schools to monitor minors' online activities and to monitor the operation of "a technology protection measure."\(^9\) In 2012, just as in 2003, the only "technology protection measure" available is blocking and filtering software. CIPA states that librarians "may disable" the filtering technology "to enable access for bona fide research or other lawful purpose(s),"\(^10\) although the law does not require librarians to do so and does not define "lawful purposes."
A decade after the Supreme Court upheld CIPA, filtering problems have not been resolved and the disabling of Internet filters upon the requests of adults does not seem to be as easy or automatic as the justices had presumed. In 2012, a federal district court in Washington granted summary judgment to a library district that refused adults' requests to turn off Internet filters, stating that the practice did not violate the First Amendment. While commentators have written extensively about the Children's Internet Protection Act, this article will fill a gap in the literature by discussing the 2012 court case challenging CIPA, the problem with the voluntary Internet filter disabling provision, and the need for the Supreme Court to designate the Internet as a new type of forum: a metaphysical public forum.

To provide context for those arguments, this article first will discuss the history and mission of the American public library. Next, it will discuss the First Amendment right-to-receive doctrine, including the Supreme Court cases upholding the right to receive. Third, the article will examine the only three library cases decided by the Supreme Court, including the CIPA case, and the one case challenging CIPA. Fourth, the article will discuss the status of Internet filtering technology and its applicability to the public library's mission. The article concludes that the Court needs to reevaluate public forum doctrine in the context of twenty-first century technology, designate Internet access as a metaphysical and inherent public forum, and apply that forum to public libraries.

THE HISTORY AND MISSION OF THE AMERICAN PUBLIC LIBRARY

The Supreme Court's decision to uphold the Children's Internet Protection Act had a significant impact on the American public library's mission, which focuses on providing patrons with access to diverse information. Public libraries in the United States have existed for more than 150 years. The nation's first large tax-supported municipal library, the Boston Public Library, opened in 1854 and served as a model for future public libraries in three major ways: by providing open access to all individuals, by allowing all residents to borrow materials, and by designing a separate children's reading room. The number of public libraries greatly expanded during the 1890s and early 1900s after philanthropist Andrew Carnegie began donating millions of dollars for the construction of municipal libraries across the nation, according to library scholar and historian Evelyn Geller. In most states, public libraries are supported by taxes, primarily local property taxes. Funding for libraries also can come from federal and state appropriations, intangible taxes, government lotteries, and private family, foundation and corporate funds. Local boards of trustees oversee most public libraries. A board determines the overall purposes, objectives and policies of the library; provides budgetary advice; and works with public officials, library associations and local residents to provide quality library services. According to the American Library Association, trustees also are expected to support librarians in resisting an individual's or group's censorship attempts. Public libraries often have provided open and equal access to all materials and to all users, with the goal of combating censorship and thus preserving an individual's right to choose reading and viewing materials.

Even before the emergence of the Internet, public libraries faced varying degrees of trouble with censorship, attempts at community control, and funding. During the latter part of the nineteenth century, intellectual freedom was not a goal of tax-funded public libraries. In the 1880s, most librarians focused on the occupational and cultural needs of patrons and did not oppose moral censorship, though mostly out of fear of losing their positions, according to Geller. As the profession of librarianship became more established in the early 1900s, public librarians began to embrace neutrality and impartiality. By the 1930s, an ideology of freedom emerged in the library profession, and the ALA began developing a set of resolutions emphasizing the importance of providing a variety of viewpoints in library materials and challenging censorship. Subsequently, the ALA started promoting "man's freedom to seek the truth where and how he will," writes Jean Key Gates, the author of a leading textbook on librarianship.
The ALA formally adopted a bill of rights in 1939. The ALA's Library Bill of Rights, which was amended several times, states that “libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment” and “libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.” In 1953, the American Library Association and the American Book Publishers Association jointly prepared and adopted the “Freedom to Read Statement,” which they have since revised several times. The statement stresses the importance of reading in a democratic society and the responsibility of librarians and publishers in protecting the freedom to read, providing access to a diversity of ideas, and opposing censorship.

The mission of the public library today, as it was in most of the twentieth century, is to support the educational, social and information needs of society, to promote self-education, and to satisfy the tastes of the popular culture, according to library scholar Richard Rubin and First Amendment scholar Rodney Smolla. Two other library scholars have called libraries central to political, social and intellectual freedom. The function of the public library is to provide materials to meet its constituents' needs for information, education, self-realization, recreation and cultural growth. Libraries are places where readers can “fulfil any personal, professional or political aspiration.” In addition, librarians tend to hold common values, including commitment to service, respect for truth and the search for truth (including protecting and defending many points of view), and tolerance for multiple perspectives on any given subject. The mission of the American public library has been to support intellectual freedom and to provide open and equal access to all patrons and to all users, regardless of whether information was delivered in print, microfilm, audio recordings, video recordings or online.

In the twenty-first century, Internet access at public libraries has expanded, thus leading to an expansion in patrons' access to information. Public computer and Wi-Fi use increased at more than 70% of U.S. public libraries in 2009-10, with two-thirds of the libraries reporting that they are the only provider of free public access to computers and the Internet in their communities. In a 2011 survey, 83% of adults reported that it was very important or important that their public library provide computer access, training and support, up seven percentage points from 2010. During a period of continuing high unemployment in 2011, as the economy continued to recover from the recession, the demand for free and varied public library services increased, including Internet access. In 2012, public libraries continue to serve as multi-purpose social institutions for both self-improvement and entertainment and a place for patrons to access diverse information and ideas. Librarians who refuse to disable filters for adults hinder adult patrons' access to protected online speech.

THE FIRST AMENDMENT RIGHT TO RECEIVE INFORMATION AND IDEAS

First Amendment scholars and the Supreme Court have emphasized the importance of the right to receive, including in the context of public libraries. Thomas Emerson stated that there is a First Amendment right to receive and obtain communication, independent of or supplemental to the right of the speaker to communicate information. He argued the “right to read, listen, or see is so elemental” that it deserves full First Amendment protection. This “right to know” is of “vital importance in a democratic society” and is an affirmative right, in contrast to the negative right of being free from government interference. In Professor Emerson's view, the right to know is necessary for self-fulfillment and should receive “direct constitutional protection.” To attain self-fulfillment, or self-realization, Emerson said an individual has “the right to form his own beliefs and opinions ... and the right to express these beliefs and opinions.” According to Emerson, the “suppression of
belief, opinion and expression is an affront to the dignity of man, a negation of man's essential nature.” A public library provides the environment for patrons to access new ideas and information that helps to develop opinions and beliefs and contributes to individual self-fulfillment.

First Amendment scholar William Lee, writing generally about the right to receive information and ideas, stated that this doctrine is important and useful because it “restricts the government's power to interfere with the recipient of the communication.” However, Lee wrote that the Supreme Court has failed to develop “a cohesive theory of free speech” or to tie the right to receive information and ideas to the recipient, independent of the speaker. Although the Supreme Court has stated that the right to receive is well established, Lee said the Court has never explained the theoretical foundation of that right. In a 1987 article, Lee wrote that part of the problem is the Court developed the right-to-receive doctrine in various contexts and for “disparate purposes,” including upholding the right to receive political speech, even though it was communist propaganda from abroad; upholding the right to receive commercial speech in the form of advertising prescription drug prices; and upholding the right of public school students to have access to school library books by striking down a school board decision to remove certain books from the library. Lee argued it would make more sense to recognize the right to receive information only in situations where a speaker has a right to speak, although other scholars disagree.

One such First Amendment scholar, Rodney Smolla, wrote that the First Amendment protects not only individual self-expression, but also the right to receive information and ideas in libraries. He argued that librarians have to show commitment in maintaining “intellectual openness” in public libraries. “Librarians play a pivotal role in maintaining the free flow of information in American society,” Smolla wrote. He wrote he was “disappointed that courts have not gone very far in devising First Amendment doctrines that more fully protect the intellectual neutrality of libraries.” He wrote, “[N]ew communications technologies carry with them increased censorship pressures” and urged librarians to fight against censorship in what he called “the never ending struggle to maintain the free flow of information in a wide-open and robust democracy.” Although Internet access was not widely available when Smolla's article was published, his argument applies directly to online access in public libraries because the Internet is a new communication technology that promotes a free flow of information and ideas.

A decade later, another legal scholar stated that Internet access in public libraries plays a crucial role in the right to receive information and in the exchange of ideas. Professor Marc Blitz described the public library as a place “where open access for the public follows logically from the mission of the institution.” Blitz argued the right to receive information, including online content, applies to public libraries because patrons can retrieve information that leads to self-fulfillment and autonomy.

In addition, the Supreme Court has recognized the right-to-receive doctrine as an important corollary of freedom of speech. In a series of cases decided over five decades, the Court has held that the First Amendment protects not only the right to distribute information, but also the right to receive information and ideas. The Court first clearly articulated a right to receive information and ideas during the 1960s, according to Professor Lee. However, the Court directly referred to the right to receive ideas in two cases decided in the 1940s: the right of residents to hear messages distributed door to door and the right of potential union members to listen to union organizers' messages. The Court subsequently upheld the right-to-receive doctrine in other contexts, including the right of the recipients of overseas communist literature to have the material delivered by the U.S. Postal Service without
returning a special reply card prior to delivery, the right of patients to receive information on contraception from their health care providers, and the right of pharmacists to advertise prescription drug prices so that consumers could make informed decisions based on those prices. In the contraception case, decided in 1965, the Court struck down a Connecticut law that criminalized the use of contraceptives and the distribution of information on contraception to married and single individuals. In Griswold v. Connecticut, Justice William Douglas wrote, “The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach.” Four years later, the Court acknowledged the right-to-receive precedent: “It is now well established that the Constitution protects the right to receive information and ideas ... (and) this right to receive information and ideas, regardless of their social worth, is fundamental to our free society.” Then, in 1976, the Court first applied the right-to-receive doctrine to purely commercial speech when it struck down a law prohibiting the advertising of prescription drug prices. The Court stated that advertising deserves First Amendment protection and the First Amendment protects consumers’ interest in the free flow of information, as such information is indispensable to well-informed private economic decisions. Justice Harry Blackmun wrote for the Court: “This Court has referred to a First Amendment right to ‘receive information and ideas’ .... If there is a right to advertise, there is a reciprocal right to receive the advertising.”

LIBRARY CHALLENGES REACH THE COURTS

Despite the Court's acknowledgement of the importance of the right to receive over a forty-year period, the Court plurality did not acknowledge the right in its opinion upholding CIPA, even though the Court had addressed that right in ALA’s two previous library decisions. However, the right-to-receive doctrine was mentioned briefly in one of its two concurring opinions and in one of ALA’s two dissenting opinions. The Court did not refer to its previous two library decisions at all in the CIPA opinion: The first case involved public libraries, and the second case involved public school libraries.

In the Court's first library case, decided in 1966 during the Civil Rights era, the issue was physical access to public libraries. In Brown v. Louisiana, the plurality overturned the convictions of five African-American men who were convicted of breach of peace after staging a peaceful and silent protest against segregation in the Clinton, Louisiana, branch of the Audubon Public Library. The five men stayed in the library for ten or fifteen minutes and refused to leave when librarians asked them to do so. African-Americans were not allowed to use the libraries or the red bookmobile that served whites. They were only allowed to use the blue bookmobile, which served Negroes. In writing the plurality opinion, Justice Abe Fortas stated that the convictions violated the First Amendment rights of the protesters. He wrote that the government may regulate the use of libraries, but it cannot do so in a discriminatory manner. In referring to the role of the public library, he wrote, “It is an unhappy circumstance that the locus of these events was a public library -- a place dedicated to quiet, to knowledge, and to beauty.” Although Justice Fortas’ statement did not directly refer to the right to receive doctrine, his reference to “knowledge” implies the right-to-receive information and ideas in public libraries, for without exposure to information, one cannot gain knowledge.

In the Court's second library case, decided in 1982, the removal of books from public school libraries was at issue. In Board of Education v. Pico, the Court held that a school board violated the First Amendment when it ordered the removal of books from a junior high school library and a senior high school library. The school board described the books as “anti-American, anti-Christian, anti-Semitic, and just plain filthy.” Justice William
Brennan wrote the plurality opinion, stating, “[T]he right to receive ideas follows ineluctably from the sender's First Amendment right to send them: ‘The right of freedom of speech and press ... embraces the right to distribute literature, and necessarily protects the right to receive it.” 92 Justice Brennan wrote that the right to receive ideas and information “is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom.” 93

In a dissenting opinion, Justice William Rehnquist distinguished school libraries from public libraries, stating that the right to receive information in schools is not supported by Court precedent. 94 He did not address the right-to-receive doctrine in the CIPA case. In Pico, Rehnquist wrote, “Unlike university or public libraries, elementary and secondary school libraries are not designed for freewheeling inquiry; they are tailored, as the public school curriculum is tailored, to the teaching of basic skills and ideas.” 95

Although Justice Rehnquist disagreed with the plurality decision in Pico, his statement on “freewheeling inquiry” supports the public library's mission in providing access to a wide variety of information and ideas. However, in writing the ALA opinion, Rehnquist did not cite his dissent in Pico.

In 2003, the ALA Court used congressional spending power as the rationale for upholding the law. 96 The Court held that the CIPA did not impose an “‘unconstitutional condition” on public libraries. 97 The government can define the parameters of the programs that it funds and “insist that these ‘public funds be spent for the purposes for which they were authorized,’” the plurality opinion stated. 98 Chief Justice Rehnquist wrote that libraries must have broad discretion in deciding what material to acquire for patrons. 99 The “traditional role” for public libraries is “identifying suitable and worthwhile material; it is no less entitled to play that role when it collects material from the Internet than when it collects material from any other source,” Rehnquist wrote. 100

The plurality opinion held that CIPA did not violate the First Amendment. First, the Court said public forum doctrine did not apply to public libraries, and librarians were not engaging in prior restraint in their role in making acquisition decisions. In evaluating CIPA in the context of the First Amendment fora doctrine, Chief Justice Rehnquist wrote, “Internet access in public libraries is neither a ‘traditional’ nor a ‘designated’ public forum.” 101 He wrote that Internet access in public libraries is not a traditional public forum because it has not been “immemorially held in trust” for use by the public for communication. He also wrote that Internet access in public libraries is not a limited public forum because the government did not intentionally take action to designate it as such. 102 Second, the plurality held that the prior restraint doctrine does not extend to collection decisions made by public libraries. 103 The plurality reasoned that a library's decision to use filtering software is not a restraint on private speech, but rather a collection decision, and public libraries are not required to add material to their collections just because the material is constitutionally protected. 104

Justice Stephen Breyer concurred, writing that the Court has long recognized the right to receive information and ideas. 105 Breyer wrote that because “[t]he Act directly restricts the public's receipt of information,” he would apply “heightened scrutiny,” rather than strict scrutiny or rational basis, in analyzing CIPA. 106

The two dissenting opinions did not address public forum doctrine, although one dissent addressed the right-to-receive doctrine. 107 Both dissents argued that CIPA violated the First Amendment. Justice John Paul Stevens wrote that CIPA constitutes “a significant prior restraint” because some libraries' procedures would make it difficult for patrons to have the filtering disabled and most of the filtered content was “constitutionally
He wrote that CIPA violated the First Amendment because it required filters to be installed on all computers with Internet access, not just those computers funded with E-rate discounts. Justice David Souter wrote that mandatory filtering constitutes censorship because filtering technology blocks access to electronic resources that the library has already acquired. Moreover, because filtering software is proprietary, Justice Souter wrote, only software developers know exactly which material has been blocked. Even though librarians could select categories -- such as nudity or violence -- to block, they would not know the actual content blocked in each category. He also wrote that the CIPA's blocking mandate was an invalid exercise of Congress's spending power because CIPA “mandates action by recipient libraries that would violate the First Amendment's guarantee of free speech if the libraries took that action entirely on their own.” In addressing the right-to-receive doctrine, Souter wrote, “There is no good reason, then, to treat blocking of adult enquiry as anything different from the censorship it presumptively is.” However, Justice Souter wrote that he would have upheld the law if the mandatory filtering applied only to minors.

The disabling filter provision of CIPA was a key factor for the Court in upholding the law and was discussed by the plurality, both concurrences and one of the two dissents. The plurality noted that the Constitution does not guarantee individuals freedom from embarrassment or inconvenience when accessing information at public libraries and viewed the disabling provision as a major factor in upholding the law's constitutionality:

> Assuming that such erroneous blocking presents constitutional difficulties, any such concerns are dispelled by the ease with which patrons may have the filtering software disabled. When a patron encounters a blocked site, he need only ask a librarian to unblock it or (at least in the case of adults) disable the filter.

Justice Anthony Kennedy based his concurring opinion on the enabling provision of CIPA, writing that “there is little to this case” because the provision would allow libraries to turn off filtering software and unblock specific websites for adults in a timely manner. Justice Kennedy wrote that, although CIPA is not unconstitutional on its face, an adult could challenge the statute on an as-applied basis if the filtering could not be removed in a timely manner. In a separate concurrence, Justice Stephen Breyer wrote, “[T]he adult patron need only ask a librarian to unblock the specific Web site or, alternatively, ask the librarian, ‘Please disable the entire filter.’” Justice Stevens wrote that the assurance that librarians could choose to disable the filters upon request “does not cure the constitutional infirmity in the statute.”

CIPA has been challenged on an as-applied basis only once, with the case revolving around the law's Internet filter disabling provision. In 2012, in Bradburn v. North Central Regional Library District, a federal district court granted a library district's motion for summary judgment, stating that the refusal of public librarians to disable Internet filters upon the request of adults did not violate the First Amendment. The court used the rational basis standard in making its decision, stating that librarians are entitled to make content-based collection development decisions when deciding what material to provide to patrons. The court wrote that it was “reasonable for [the library district] to develop an Internet policy that can be implemented consistently throughout its twenty-eight branches.” The court held, “Blocking Internet sites and pages that contain constitutionally-protected material deemed suitable only for adults helps ensure that the environment at NCRL libraries is consistent with its mission of providing learning and research opportunities for individuals of all ages.”
Two years earlier, the case had been remanded to the Washington Supreme Court because the plaintiffs challenging the filtering policy had argued the Washington Constitution provided a higher level of speech protection than the First Amendment. In a 6-3 decision, the state supreme court held that the library district did not violate the state constitution either in establishing a policy that Internet filters not be disabled for adults or in refusing to turn off filters upon the request of adults. The court viewed the decision to filter as a collection decision rather than the removal of content and saw the filtering policy as viewpoint neutral. A dissenting opinion argued that there was no reason to install an Internet filtering system that could not be easily disabled at the request of an adult and that eight members of the Supreme Court had found the disabling provision of CIPA to be “constitutionally critical.” The opinion cited a 1974 Washington state supreme court decision, which stated, “Freedom of speech without the corollary -- freedom to receive -- would seriously discount the intendment, purpose and effect of the first amendment.”

FILTERING TECHNOLOGY AND THE PUBLIC LIBRARY

A library patron's ability to access material in public libraries is directly related to the librarian's role in determining which materials to add to the library's collection, including online resources. Because Internet filtering software is proprietary, however, librarians do not have input into online acquisition decisions. When librarians select Internet filtering software, they are not able to base their choices on the library's collection development policies, as they do in acquiring books and other resources. In choosing commercial filtering software, librarians are not able to determine if the filters meet their needs because software companies do not disclose their standards. Librarians have no way of knowing exactly which content has been blocked in any given category, as the district court noted in 2002 in striking down the Children's Internet Protection Act of 2000. Moreover, the software's erroneous interpretation of key words and images can block Web sites that provide non-sexual visual material and information, such as Web sites on health care, gay and lesbian issues, and animal welfare. In addition, filtering technology is imprecise in that it does not block all sexual content.

Another major problem with CIPA's filtering requirement is the disconnect between the categories of the statute and the categories of images that filtering software is able to block. CIPA prevents access to visual images that are obscene, child pornography or harmful to minors. However, Internet filters are not able to clearly discern what images would meet the criteria of these three categories. During the first decade of the twenty-first century, researchers reported that while Internet filtering technology can be effective in blocking access to a large amount of pornography, it is not a panacea. In 2003, the year the Supreme Court decided the CIPA case, the American Library Association stated that filters still were not sophisticated enough to distinguish pornography from art or literature. Prior to making this determination, the ALA had reviewed findings of numerous studies, including those conducted by the National Research Council and the Kaiser Family Foundation. The studies showed that filters failed to block many sites banned under CIPA, as well as overblocked hundreds of thousands of legal and useful sites.

In 2008, in the most recent comprehensive study of Internet filters, the Deloitte research team evaluated twenty-six filtering software programs and found that filtering technology had improved, especially in blocking pornography. Nonetheless, the Deloitte report showed that while a less restrictive filter setting would allow access to more “good” content, the filter would not block as much “bad” content. Conversely, a more restrictive setting would block more “bad” content, but at the same time erroneously prevent access to more “good” content. In defining sexual content, the Deloitte study labeled content as “bad” if the text or pictures “could impair” minors' sexual development and “may have a traumatising effect on youngsters,” such as “sex accompanied...
by pain, injury or humiliation” and “hardcore sex, ejaculation, erection, defecation, urination, bestiality, [and] necrophilia.” 140

Meanwhile, anecdotal reports on the use of filtering programs in K-12 classrooms in the United States suggest problems on the reliance of proprietary software, whether in schools or public libraries. 141 In 2008, teachers found that Web sites were blocked on topics that were completely appropriate for students’ schoolwork. For example, high school students in the Midwest complained that all Google search results and all blogs were blocked. 142 A middle school teacher in the Midwest, who had assigned animal research papers, reported that the San Diego Zoo and University of Michigan Zoological Museum Web sites were blocked. The teacher also reported that a student could not access a map of Canada when trying to do a social studies assignment. 143 A Wisconsin library media specialist reported that students doing research on their favorite guitar players found everything about their musicians blocked. 144 In each case, teachers and librarians did not know why the Web sites were blocked.

Because CIPA applies to public libraries as well as schools, library scholars Paul Jaeger and Zheng Yan questioned the appropriateness of adult library patrons and librarians being restricted to the same level of Internet access as children. 145 The public library's overarching mission is to provide open and equal access to all materials and users. Because of this mission, most librarians have a major philosophical problem with Internet filters. 146 Moreover, the First Amendment right to receive doctrine supports open Internet access in public libraries for adults.

*83 ANALYSIS

In upholding CIPA, the Supreme Court seemed to misunderstand the parameters of the disabling provision, ignored the right-to-receive doctrine, and missed the opportunity to update public forum doctrine to include the Internet. Although the Bradburn 147 case is limited in scope, it indicates that the disabling of Internet filters in public libraries may not be as automatic or timely as the Supreme Court had anticipated when upholding CIPA. The solicitor general had assured the justices that filters would be disabled upon request and in a timely manner, but the text of the law states that librarians have the choice as to whether they will disable filters. 148 The Bradburn case illustrates the dichotomy between CIPA's wording and the solicitor general's assertion that librarians would readily turn off filters at the request of adults.

There are no recent studies on requests to disable Internet filters or on requests to allow access to specific Web sites in public libraries. However, the Bradburn case, a 2008 case study, and a 2004 survey shed some light on filter disabling issues. In Bradburn, the library district reported that it had received ninety-two requests to unblock access to specific Web sites and pages over a five-month period in 2008, which is different than turning off filters for unfettered Internet searches. The library district responded to eight requests within one hour, nineteen within the same day, twenty-nine the next day, twenty within three days, and five other requests more than three days later. No information was provided on the eleven remaining requests. 149 Nonetheless, the delay in responding to the majority of requests would result in patrons needing to make a second trip to the library, often on a different day, which does not meet the timeliness factor the Supreme Court emphasized. Even though librarians presumably granted access to specific Web sites, the librarians did not disable the filters, as the solicitor general had indicated would readily happen. A 2008 study of all South Dakota public libraries receiving E-rate funding found that 50% of the libraries had received requests to disable filters for specific searches. 150 The study *84 did not report the percentage of disabling requests granted or denied. 151 The last comprehensive survey of public libraries, conducted in 2004, indicated that only 64% of libraries said they would disable filters upon request. 152
To determine the nature and extent of filtering disabling problems, a survey of public libraries in the United States is needed. Surveyors should collect data on the number of disabling requests made, the number of disabling requests granted, and the time frame in granting the requests. The Supreme Court, through *Bradburn* or other challenges, may have the chance to reevaluate its decision on the voluntary nature of the provision and what constitutes timeliness in disabling filters.

In addition to misunderstanding the disabling provision of CIPA, the Court also ignored the First Amendment right to receive information and ideas and precedent. This right-to-receive doctrine is critical in public libraries, where Internet access serves as a medium for the free exchange of ideas. The federal district court, in striking down CIPA as unconstitutional, recognized the public library's mission and stated that the Supreme Court previously had applied the right to receive doctrine to the Internet. Moreover, the lower court added that the Internet's “unique speech-enhancing character” is derived from both a library patron's right to receive online information and a speaker's right to communicate via the Internet.

The right-to-receive doctrine applies to public libraries, in part, because they are autonomous institutions. The library autonomy or professionalism principle protects the acquisition decisions of librarians from government intervention and supports each patron's right to receive information and ideas. Under the principle, librarians' decisions on acquiring materials would not be subject to judicial challenge. Furthermore, legislation forcing librarians to exclude material should be presumed unconstitutional. First Amendment scholar Rodney Smolla advocated the concept, which he labeled the “professional principle.” Smolla writes that content decisions in public libraries, “[S]hould be insulated from partisan political influence by committing them to the sound discretion of professionals in the field. These professionals judge the merits of a work from perspectives limited to the professional criteria that have evolved within their areas of expertise.”

Although Smolla was writing before Internet access was available in public libraries, his arguments apply to online works. For example, the professionalism principle would give librarians constitutional status as “trustworthy experts” in balancing the First Amendment with library management issues and concerns. Under the autonomy or professionalism principle, librarians, rather than the government, would make decisions on the use of Internet filtering. Moreover, problems then could be resolved at the state or local level, rather than at the federal level.

Finally, the Court missed an opportunity to revise public forum doctrine. The Court could have designated Internet access in public libraries as a fourth type of forum -- an inherent or metaphysical forum. The current public forum doctrine is inadequate for new and emerging technologies which do not meet the criteria of either a traditional public forum or a limited public forum. Some scholars have compared public libraries to public parks, thus viewing libraries as traditional public fora and places to foster public inquiry. The public forum doctrine, however, historically has focused on the rights of the speaker, rather than the recipient, and scholars disagree on the application of forum doctrine to listeners and to the public library.

Legal scholar Bernard Bell wrote, “[T]he role of libraries for listeners may be analogized to the role of streets and parks for speakers.” He argued that the public library is a facilitator, not a channel, of government speech. Therefore, Bell writes, “[T]he government should not have the plenary control over the material it makes available to patrons of a public library in the same way that it may control fora in which the government seeks to communicate its own message.”

In contrast, legal scholar Laura Stein wrote that online speech rights and online public spaces are not covered under modern public forum doctrine. She said that online “areas” are not likely to be considered public fora unless the
government so-authorizes. Stein wrote that contemporary public forum doctrine does not protect speech rights in private and public media, such as the Internet and public broadcasting, adding that public forum doctrine was more relevant in the nineteenth century, where public streets and parks served as places to speak. However, Professor Stein has argued the public has “some affirmative speech rights” in the media under the community-centered democratic theory, which “charges the government with creating communication arrangements that offer the broader public positive opportunities to participate in public discourse.”

First Amendment scholar Robert Corn-Revere argued that public forum doctrine is not a good fit for libraries because it focuses on speakers rather than listeners or readers. In a 2003 article, Corn-Revere chastised the Supreme Court for not revising and clarifying public forum doctrine and the doctrine of unconstitutional conditions in the CIPA case. He wrote that the Court should have adopted a different theoretical framework, although he did not make specific recommendations. Corn-Revere wrote that the Court should have developed a “coherent theory for analyzing speech restrictions imposed on public institutions.”

Because public forum doctrine is so intertwined with freedom of speech, the Court would most likely use the doctrine in reevaluating the Internet. The lower court, which struck down CIPA as unconstitutional, had stated that the Internet shares many characteristics of a traditional public forum -- a place open to any member of the public to receive speech. If the Supreme Court had applied the right to receive doctrine, independent of the right to speak, the Court could have developed a fourth type of forum applicable to Internet access in public libraries: an inherent or metaphysical public forum with a focus on the recipient of information. More than thirty years ago, First Amendment scholar Thomas Emerson differentiated freedom of speech from the receiving of information, writing that there is a First Amendment right to receive and obtain communication, independent of or supplemental to the right of the speaker to communicate information. His theory would apply to Internet access in public libraries today.

Law student Derrick Stomberg noted that the concept of an “inherently public forum” is not new, although he did not focus on the right to receive doctrine in a 2004 law review article. Stomberg described the Internet as an inherent or metaphysical forum, which serves as a centralized place where people can look for information and discuss ideas. Stomberg cited a 1992 concurring opinion by Justice Kennedy, which focused on expanding the traditional public forum. According to Justice Kennedy, the Court should adopt a more modern and objective standard to the public forum doctrine, one that extends beyond the historical designation of streets, parks and sidewalks as their role is diminishing. Justice Kennedy wrote that the Court needs to recognize the possibility of other types of traditional public fora, “whatever their historical pedigree and without concern for a precise classification of the property.” In his concurrence, written nearly a decade before the Internet was such an intrinsic part of daily life, Justice Kennedy wrote:

> Without this recognition our forum doctrine retains no relevance in times of fast-changing technology and increasing insularity. In a country where most citizens travel by automobile, and parks all too often become locales for crime rather than social intercourse, our failure to recognize the possibility that new types of government property may be appropriate forums for speech will lead to a serious curtailment of our expressive activity.

While an inherent or metaphysical public forum in a public library setting would support the mission of public libraries and focus on the rights of the receiver, patrons still would need to agree to the library's policies regarding behavior and online content being accessed, just as they do now at many libraries. In a metaphysical public forum, any content-based regulation would be subject to strict scrutiny: The government would need to show that a
content-based regulation, such as Internet filtering in libraries, would be narrowly tailored to meet a compelling government interest. For example, a regulation requiring minors to use filtered computers could meet the strict scrutiny test as the government has a compelling interest in protecting minors from harm, such as exposure to sexually explicit materials. In addition, individuals who violate the law or library policies on prohibited content can be turned over to authorities or given a verbal or written warning or a suspension from the library. Other library policies, such as the installation of privacy screens on computers, separating adults' and children's computers, or limiting time on computers, also could be implemented. Finally, content neutral regulations, such as blocking all music and video downloads because of bandwidth concerns, also would be acceptable and would support the public library's mission.

*89 CONCLUSION

CIPA's mandatory filtering requirement with the voluntary disabling clause interferes with the mission of the public library and hinders the adult patron's right to receive information and ideas. In upholding CIPA, the Supreme Court did not fully understand the disabling provision and erroneously applied the Spending Clause, which allows Congress to attach conditions to programs that it funds. Instead, the Court should have used the CIPA case to update public forum doctrine and reinforce the right to receive doctrine in the context of a metaphysical public forum -- the Internet. The designation of the Internet as an inherent or metaphysical public forum would support the mission of the public library in providing access to information. Although the Constitution does not guarantee individuals freedom from embarrassment or freedom from inconvenience when requesting information at public libraries, adult patrons should have open and timely access to the Internet when asking that filters be disabled. Future research would help shed light on the exact nature and extent of filtering problems in public libraries, including issues with disabling filters. A survey could be developed and distributed to a random sample of public libraries, asking for the number of filtering disabling requests, the number of requests granted, and the ease with which filters can be disabled on individual computers. In the meantime, the designation of the Internet as an inherent or metaphysical forum would support the mission of the American public library and the First Amendment right to receive doctrine, independent of the right to speak.

Footnotes

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1 See RICHARD E. RUBIN, FOUNDATIONS OF LIBRARY AND INFORMATION SCIENCE 160 (2000). See also Rodney Smolla, Freedom of Speech for Libraries and Librarians, 85 LAW LIBR. J. 71, 73 (1993) (“Librarians must fight those who seek to destroy the critical role of the library as the free and open marketplace of ideas, turning it instead into an arbiter of conventional mainstream tastes and sensibilities.”).

2 See THE BOWKER ANNUAL LIBRARY AND BOOK TRADE ALMANAC 243 (Dave Bogart ed., 44th ed. 1999). But see Daniel J. Boorstin, The Indivisible Community, in LIBRARIES AND THE LIFE OF THE MIND IN AMERICA 119 (1977), explaining that many early librarians were torn between the preservation of books by protecting them from the public and the diffusion of ideas, or making books accessible. In addition, librarians were concerned over the dress and demeanor of patrons, particularly the “‘laboring classes' ... who might soil the books and were unlikely to show them the respect that they were entitled to.” Id. at 119.


5 Am. Library Ass'n, 201 F. Supp. 2d at 466 (quoting Sund v. City of Wichita Falls, 121 F. Supp. 2d 530, 547 (N.D. Texas 2000)).
The Federal Communications Commission concluded that for a school to be eligible for universal service discounts: [A] school must meet the statutory definition of an elementary or secondary school found in the Elementary and Secondary Education Act of 1965, must not operate as a for-profit business, and must not have an endowment exceeding $50 million. Both public and nonpublic elementary and secondary schools that meet these criteria will be eligible to receive discounts on eligible services.


Pub. L. No. 106-554, 114 Stat. 2763, 2763A-335 (2000) (codified as amended at 20 U.S.C. § 9134(f), 47 U.S.C. § 254(h)(6)), mandating that “a blocking technology measure” be installed on any computer connected to the Internet at libraries receiving E-rate funding and Library Services and Technology Act (LSTA) funding. Congress defined “harmful to minors” as: any picture, image, graphic image file, or other visual depiction that (i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors. Pub. L. No. 106-554, 114 Stat. 2763, 2763A-335 (2000) (codified as 20 U.S.C. § 9134(f)(7)(B); 47 U.S.C. § 254(h)(7)(G)).


18 See THE BOWKER ANNUAL, supra note 2, at 243.
19 See SHUMAN, supra note 14, at 122.
20 See id. at 75.
21 GELLER, supra note 12, at 28-29.
24 See GATES, supra note 12, at 90 (citing David K. Berninghausen, The History of the ALA Intellectual Freedom Committee, 27 WILSON LIBRARY BULL. 813 (1953)).
25 See GATES, supra note 12, at 87.
26 LIBRARY BILL OF RIGHTS, supra note 23, at art. III.
27 See id. at art. IV.
29 Id. The Freedom to Read Statement reads, in part, “The power of a democratic system to adapt to change is vastly strengthened by the freedom of its citizens to choose widely from among conflicting opinions offered freely to them.” See also RUBIN, supra note 1, at 159.
30 Id. The statement reads, “It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those that are unorthodox, unpopular, or considered dangerous by the majority.” See also RUBIN, supra note 1, at 161.
31 See RUBIN, supra note 1, at 244; Smolla, supra note 1, at 73 (writing, “Librarians must fight those who seek to destroy the critical role of the library as the free and open marketplace of ideas, turning it instead into an arbiter of conventional mainstream tastes and sensibilities”).
33 See GATES, supra note 12, at 146.
35 See RUBIN, supra note 1, at 248-61.
36 See THE BOWKER ANNUAL, supra note 2, at 243. See also LIBRARY BILL OF RIGHTS, supra note 23, at art V.
37 See LIBRARY BILL OF RIGHTS, supra note 23. See also RUBIN, supra note 1, at 160 (reprint of Library Bill of Rights).


Id. at 6.

Id. at 1.

Id. at 2.

Id. at 2, 6.


Id.


Id.

Stanley v. Georgia, 394 U.S. 557, 564 (1969). In Stanley v. Georgia, the Supreme Court voted 9-0 to reverse the conviction of a man for possession of obscene material within the privacy of his home, stating that “the Constitution protects the right to receive information and ideas.” Id. at 564.

Lee, supra note 48, at 307.

Id. at 306-07.

Id. at 342.

Id. at 307-11 (citing Lamont v. Postmaster Gen., 381 U.S. 301 (1965) (holding as unconstitutional a federal statute that mandated “communist propaganda” from abroad be held at a post office until the addressee requested it)).

Id. at 314-17 (citing Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, 425 U.S. 748 (1976) (holding as unconstitutional a state statute that prohibited pharmacists from advertising prescription drug prices)).

Id. at 323-27 (citing Bd. of Educ. v. Pico, 457 U.S. 853 (1982) (holding that a school board violated the First Amendment when it ordered the removal of books from a junior high school library and senior high school library)).

Id. at 344.

See Brown v. Louisiana, 383 U.S. 131, 142 (1966) (acknowledging that a public library is “a place dedicated to quiet, to knowledge, and to beauty”). See also Kreimer v. Bureau of Police, 958 F. 2d. 1242, 1261 (3d Cir. 1992) (stating that the purpose of a public library is to pursue knowledge through “reading, writing and quiet contemplation” and “the exercise of other oral and interactive First Amendment activities is antithetical to the nature of the Library”).

Smolla, supra note 1, at 77 (citing Pico, 457 U.S. at 866-67).

Id. at 79.

Id. at 71.

Id. at 73.
63 Id. at 72, 79.


65 Id. at 847, 849-50.

66 Id. at 817-18.

67 See Bd. of Educ. v. Pico, 457 U.S. 853, 866-67 (1982) (holding that a school board violated the First Amendment by removing books from the junior and senior high school libraries); First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978) (striking down as unconstitutional a state statute that prohibited nonpress corporations from using corporate funds to support or oppose referenda issues); Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, 425 U.S. 748, 757 (1976) (holding a state law prohibiting pharmacies from advertising prescription drug prices was unconstitutional); Kleindienst v. Mandel, 408 U.S. 753, 762-63 (1972) (holding that citizens of the United States had a First Amendment right to hear what a Belgian journalist had to say, even though the Immigration and Nationality Act of 1952 barred those who advocate or publish “the economic, international, and governmental doctrines of world communism” from entering the country); Red Lion v. FCC, 395 U.S. 367, 390 (1969) (upholding the personal attack rule that required broadcasters to offer free reply time to a person whose honesty, integrity or character was attacked during the discussion of a controversial issue. The Court wrote, “It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”); Stanley v. Georgia, 394 U.S. 557, 564 (1969) (reversing the conviction of a man for possessing obscene materials in his home); Griswold v. Connecticut, 381 U.S. 479, 482-83 (1965) (striking down a Connecticut law that criminalized the use of contraceptives and the distribution of information on contraceptives); Lamont v. Postmaster Gen., 381 U.S. 301, 308 (1965) (Brennan, J., concurring) (finding unconstitutional a federal statute that required recipients of communist literature from overseas to return a reply card to the post office before the material could be delivered); Thomas v. Collins, 323 U.S. 516, 534 (1945) (striking down as unconstitutional a law requiring a union organizer to file a registration with the city before attempting to recruit members and stating that the workers had a right to hear what the organizer had to say); Martin v. Struthers, 319 U.S. 141, 143 (1943) (holding that an ordinance banning the door-to-door distribution of handbills, circulars and advertisements violated the First Amendment).

381 U.S. 479 (1965).

68 Lee, supra note 48, at 303.


71 Lamont v. Postmaster General, 381 U.S. 301 (1965).


74 Griswold, 381 U.S. at 482-83, 486. The statutes struck down were §§ 53-32 and 54-196 of the General Statutes of Connecticut (1958 rev.). Section 53-32 states, “Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned.” Section 54-196 states, “Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender.” Id. at 480.

75 381 U.S. 479 (1965).

76 Id. at 482 (citing Martin v. Struthers, 319 U.S. 141, 143 (1943); Wieman v. Updegraff, 344 U.S. 183, 195 (1952) (emphasis added).
Stanley v. Georgia, 394 U.S. 557, 564 (1969) (reversing the conviction of a man for possessing obscene materials in his home. The Court upheld the ban on producing and distributing obscenity).


Id. at 765.

Id. at 757 (citing Lamont v. Postmaster Gen., 381 U.S. 301 (upholding the rights of citizens to receive political mail from abroad)) (emphasis added). In Virginia State Board of Pharmacy, Justice Harry Blackmun also wrote that freedom of speech “necessarily protects the right to receive.” Id. (quoting Martin v. City of Struthers, 319 U.S. 141, 143 (1943); citing Stanley v. Georgia, 394 U.S. 557, 564 (1969)).


Id. at 240-43 (Souter, J., dissenting).


Id.

Id. at 137-38.

Id. at 136 (stating, “It is a permissible inference that no Negroes used the branch libraries”).


Id. at 142.

Justice Fortas’ support of the right-to-receive-information doctrine was even more evident when he supported the unanimous opinion in Stanley v. Georgia, 394 U.S. 557 (1969), holding that a Georgia statute prohibiting the possession of obscene material violated the First Amendment. Justice Thurgood Marshall, on behalf of the Court, wrote, “It is now well established that the Constitution protects the right to receive information and ideas.” Id. at 564.


Id. at 857. The nine books in the high school library were Slaughterhouse-Five, by Kurt Vonnegut, Jr.; The Naked Ape, by Desmond Morris; Down These Mean Streets, by Piri Thomas; Best Short Stories of Negro Writers, edited by Langston Hughes; Go Ask Alice, of anonymous authorship; Laughing Boy, by Oliver LaFarge; Black Boy, by Richard Wright; A Hero Ain' t Nothin' But A Sandwich, by Alice Childress; and Soul On Ice, by Eldridge Cleaver. The book in the junior high school library was A Reader for Writers, edited by Jerome Archer. Id.

Id. at 867 (quoting Martin v. Struthers, 319 U.S. 141, 143 (1943)) (emphasis in original).

Id. (emphasis in original).

Id. at 910 (Rehnquist, J., dissenting).

Id. at 915 (Rehnquist, J., dissenting).


Id. at 214.

Id. at 211 (quoting Rust v. Sullivan, 500 U.S. 173, 194 (1991)).

Id. at 204.
Three types of fora exist: traditional, limited and nonpublic. A traditional public forum is one that historically has been open for public discourse and debate and does not require official government designation, such as streets, sidewalks and parks. See Cornelius v. NAACP, 473 U.S. 788, 800 (1985); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983); Hague v. CIO, 307 U.S. 496, 515-16 (1939). In a traditional public forum, the government cannot favor one viewpoint over another and any content-based regulation must meet the strict scrutiny test -- the regulation must be narrowly tailored to serve a compelling state interest. The government can, however, impose reasonable restrictions on the use of a traditional public forum, such as limiting hours of access or loudness. A limited, or designated, public forum is public property that the government opens for specific expressive activity or the discussion of specific subjects or for use by certain groups (such as opening public university meeting rooms and municipal theaters). See Perry, 460 U.S. at 45-46; Widmar v. Vincent, 454 U.S. 263, 268-77 (1981); Southeast Promotions, Ltd. v. Conrad, 420 U.S. 546, 552-62 (1975). In a limited public forum, as in a traditional public forum, content-based restrictions must meet the strict scrutiny standard. However, in a limited public forum, the government can restrict the forum to specific speakers and topics related to the purpose for which the forum was created, as long as the government does not engage in viewpoint discrimination. A nonpublic forum generally is not open for public use because the property has an intended primary purpose that is not consistent with public use, such as airport terminals, military bases, teacher mailboxes, prisons and jails. See Int'l Soc'y for Krishna Consciousness v. Lee, 505 U.S. 672, 678-79 (1992); Perry, 460 U.S. at 46; Jones v. N.C. Prisoners' Labor Union, 433 U.S. 119, 136 (1977); Greer v. Spock, 424 U.S. 828, 838-39 (1976); Adderley v. Florida, 385 U.S. 39, 41 (1966).

The Court emphasized that public forum doctrine historically has applied to speakers, rather than listeners or recipients of the communication.

Breyer wrote that heightened scrutiny “supplements” strict scrutiny “with an approach that is more flexible but nonetheless provides the legislature with less than ordinary leeway in light of the fact that constitutionally protected speech is at issue.” Id. at 218.

In the instance of the Internet, what the library acquires is electronic access, and the choice to block is a choice to limit access that has already been acquired. Thus, deciding against buying a book means there is no book (unless a loan can be obtained), but blocking the Internet is merely blocking access purchased in its entirety and subject to unblocking if the librarian agrees. The proper analogy therefore is not to passing up a book that might have been bought; it is either to buying a book and then keeping it from adults lacking an acceptable “purpose,” or to buying an encyclopedia and then cutting out pages with anything thought to be unsuitable for all adults.

Justice Ginsburg joined in Justice Souter's dissent.
114  Id. at 231 (Souter, J., dissenting).
115  Id. at 242 (Souter, J., dissenting).
116  Id. at 231-32 (Souter, J., dissenting).
117  Id. at 209 (plurality opinion).
118  Id. (plurality opinion).
119  Id. at 214 (Kennedy, J., concurring).
120  Id. at 214-15 (Kennedy, J., concurring).
121  Id. at 219 (Breyer, J., concurring).
122  Id. at 224 (Stevens, J., dissenting).
124  Id. at 3.
125  Id. at 2.
126  Id.
127  Id.
129  Id. at 180-81.
130  Id. at 180.
131  Id. at 185. In the dissenting opinion, Justice Tom Chambers wrote that four justices “stated explicitly and four other
justices hinted strongly that content filtering in libraries is only constitutional if the filter can be removed at the request
of an adult patron.” Id. at 185 (Chambers, J, dissenting).
132  Id. at 183 (quoting of Fritz v. Gorton, 517 P.2d 911 (Wash. 1974)).
134  See Legislative Proposals to Protect Children from Inappropriate Materials on the Internet: Hearing on H.R. 3783,
H.R. 774, H.R. 1180, H.R. 1964, H.R. 3177, and H.R. 3442 Before the Subcomm. on Telecomm., Trade and Consumer
director for the Center for Democracy and Technology, referring to S.1619, the Internet School Filtering Act).
135  Am. Library Ass'n, 201 F. Supp. 2d at 462-64, 496.
139  See YOUTH, PORNOGRAPHY, AND THE INTERNET 275-80 (Dick Thornburgh & Herbert S. Lin eds., 2002),
VICTORIA RIDEOUT, CAROLINE RICHARDSON & PAUL RESNICK, SEE NO EVIL: HOW INTERNET

Deloitte, supra note 136, at 10.


Id. at 55.

Id.


See Barbara H. Smith, To Filter or Not to Filter: The Role of the Public Library in Determining Internet Access, 5 COMM. L. & POL’Y 385, 391 (2000).

231 P.3d 166 (Wash. 2010).


231 P.3d at 177.

Candice Spurlin & Patrick Garry, Does Filtering Stop the Flow of Valuable Information?: A Case Study of the Children’s Internet Protection Act (CIPA) in South Dakota, 54 S.D.L. REV. 89, 94 (2009). According to the authors, the library director was the person interviewed in each instance. Id. at 93.

The study focused on two criteria: the number of complaints made to the library administration about blocked information and the number of requests made to “disable or remove the blocker.” Id. at 93. The authors reported, “[N]o directors stated that adults had ever asked them to remove filters completely or that any adults had ever complained that their First Amendment rights had been violated.” Id. at 94.


Liebler, supra note 87, at 66.

See Blitz, supra note 64, at 816; Richard J. Peltz, Use “the Filter You Were Born With”: The Unconstitutionality of Mandatory Internet Filtering for the Adult Patrons of Public Libraries, 77 WASH. L. REV. 397, 440-41 (2002). See also Jaeger & McClure, supra note 153.

See Liebler, supra note 87, at 73.


Id. at 469.

See Chen, supra note 159, at 1362. See generally, Smolla, supra note 1.

Smolla, supra note 1, at 73.


See Bell, supra note 163, at 221; Liebler, supra note 87, at 71-74; Peltz, supra note 155, at 440-41.

See Peltz, supra note 155, at 440-41.

Bell, supra note 163, at 221.

Id. at 220.


Id. at 13.

Id. at 19.

Id. at 18. Community-centered democratic theory is a self-governance theory that identifies spaces as “essential elements of democratic society” where people can exchange information and ideas as an aid in developing a common understanding of their common good. Id. at 1.

Id. at 17.

Id. at 18. The unconstitutional-conditions doctrine states that “the government cannot condition a person's receipt of a government benefit on the waiver of a constitutionally protected right, (esp. a right under the First Amendment.”). BLACK'S LAW DICTIONARY (8th ed. 2004).

See Corn-Revere, supra note 159, at 129.

Id. at 127-28.

Id. at 126.


Emerson, supra note 41, at 2.

Stomberg, supra note 163, at 70-73.

Id. at 70-71 (citing Int'l Soc'y for Krishna Consciousness v. Lee, 505 U.S. 672, 697-98 (1992) (Kennedy, J., concurring in the judgment)). The Krishnas, a religious group, challenged the enforcement of a regulation prohibiting their solicitation of money and distribution of literature inside airport terminals. The Court held that an airport was a nonpublic forum and therefore the regulation need only meet the reasonableness standard and not the strict scrutiny standard. The Court held that prohibiting solicitation of money and distribution of literature inside airport terminals
was reasonable to promote efficient air travel. The ordinance allowed solicitation and distribution of information on sidewalks outside airport terminals. 505 U.S. at 675-83.

181 505 U.S. at 697-98 (Kennedy, J., concurring).


184 Id. at 209 (plurality opinion).