

WITH FEDERAL DOLLARS COME FEDERAL RESTRICTIONS FOR LIBRARIES

The United States Supreme Court has upheld a federal law that requires public libraries receiving federal assistance to install pornography-blocking software on public computer terminals, or risk losing their access to federal funding. *United States v. American Library Association*, 539 U.S. ____ (2003).

This decision affirms the Children's Internet Protection Act (CIPA), which requires public libraries receiving grants or other monies under the federal E-Rate program or Library Services and Technology Act (LSTA) to have a "policy of Internet safety for minors that includes the operation of a technology protection measure ... that protects against access by all persons to 'visual depictions' that constitute 'obscenity' or 'child pornography,' and that protects against access by minors to 'visual depictions' that are 'harmful to minors.'" 20 U.S.C. § 9134 (f) (1) (A) (i).

This case is a departure from the Supreme Court's other recent decisions on Internet pornography. In 1997, the Court struck down the Communications Decency Act, which made it a crime to put adult-oriented material online where children could find it, stating that the law was "wholly unprecedented" in its breadth and unconstitutional under the First Amendment. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). Other, similar decisions have all struck down laws attempting to criminalize the dissemination of Internet pornography.

American Library Association is notable because it is an affirmation of a different type of law – a federal funding law, rather than a federal criminal statute. This allows Congress to use the carrot of federal funding to achieve its objective (preventing minors from accessing harmful Internet pornography), rather than the blunt stick of criminal liability for those who distribute it. This clever legislative technique also changes the way a court goes about reviewing such a law. When reviewing a statute that restricts speech and implicates the First Amendment, courts apply the "strict scrutiny" standard, which means that the law must be "narrowly tailored" to further a "compelling governmental interest." This standard is difficult to satisfy, and, more often than not, a court decision under this standard will favor an individual's right to communicate freely, without government intervention.

In the case of CIPA, the law places certain standards on public libraries in order to obtain federal funding. Such a law doesn't necessarily impinge on constitutionally protected speech, the Court stated. Rather, it is a reasonable condition that Congress has placed on federal funding. Because the law doesn't deny a fundamental right, such as free speech, the Court stated that Congress has the right to insist that public funds be spent "for the purposes for which they were authorized." *Id* at *14. A court reviewing a government regulation that does not inhibit a fundamental right, nor targets a suspect class of people, uses the "rational basis" standard of review. This means that the law in question must be "rationally related" to a "legitimate" governmental purpose, such as protecting children from exposure to Internet pornography. In the eyes of the Court, CIPA easily passed this test. Chief Justice Rehnquist stated, "A legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right [to free speech]." *Id* at *15.

Librarians should take note of this decision, if you have not already dealt with the compliance requirements of either E-Rate or LSTA. In order to comply with these two federal requirements, public libraries receiving federal funding, either to purchase Internet access under E-Rate, or LSTA grants, must install pornography filtering software on publicly accessed computer terminals with Internet access. Librarians are allowed to disable this software at the request of an adult user, but it must be installed to prevent minors from accessing pornographic material.

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VLCT News, July 2003