Court Flouts First Amendment, OKs Libraries' Internet Censorship Scheme

by Emma Llansó [1]
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It's a basic First Amendment principle: Once a public library provides a resource in its collection, it's up to the patron to decide how to use it – the library doesn't control what parts of the encyclopedia a patron can read after she takes it off the shelf, and it shouldn't try to tell users what parts of the Internet they can read when using library computers. Unless, apparently, you live in a federal district where the court is willing to invent a new legal standard in order to approve your local library's Internet censorship policy.

Earlier this week, a federal court in Washington state ignored clear Supreme Court precedent when it ruled in the case [2] of *Bradburn v. North Central Regional Library District* that the NCRL's Internet filtering policy does not violate the First Amendment. That policy allows NCRL to deny adult patrons' requests for the unblocking of web sites, even when the content of those sites is constitutionally protected and legal for adults to receive. The court concluded with scant analysis that the NCRL's censorship was "reasonable" and therefore constitutional, creating in the process a new and alarmingly low legal standard out of whole cloth.

The main problem with this decision? The Supreme Court has already come to the opposite conclusion. In *US v. American Library Association* [3], the ALA challenged the Children's Internet Protection Act (CIPA), a federal law that requires public libraries to install content filtering software on library computers in order to receive federal funding to support Internet access. The case spurred much debate within the Court, with multiple justices writing opinions and no single opinion carrying a majority, but one consensus was clear: the constitutionality of government-mandated filtering schemes depends on adult patrons' ability to request and receive unfettered access to protected speech. As a result of the Supreme Court's decision regarding CIPA, the ALA, which champions patrons' "Freedom to Read [4]", sensibly recommends [5] that libraries set their filters at the least restrictive level in order to minimize the blocking of protected speech. Yet, as the Washington plaintiffs claim and as this news story describes [6], patrons of NCRLD libraries are faced with an Internet filtering system configured to block access to a wide variety of wholly legal speech in such broad categories as "Tobacco," "Criminal Skills," "Dating/Social," and "Profanity."

In a flimsy five-and-a-half page opinion, the district court simply declared that "[b]ecause NCRL's Policy, including not disabling the Internet filter at the request of an adult patron, is reasonable, there is no overbreadth or content-based First Amendment violation." (In 2010, the Washington state Supreme Court came to a similar and similarly wrong-headed conclusion [7] when considering whether the policy violated Washington's state Constitution.) To support this dangerous assertion that government censorship policies are fine as long as they are "reasonable", the district court relied on an "unpublished opinion" – a ruling that lacks precedential value – that the court's own rules forbid it from using [8] – rather than grappling with the Supreme Court's extensive analysis of the same issue in the *ALA* case.

The district court did cite Justice Breyer's comment in *US v. ALA* that a library may exercise its discretion when "it collects material from the Internet," the same way that it can exercise its discretion when choosing what books to purchase. But unlike when making book selection decisions, libraries making the "collection decision" to provide Internet access don't curate a select set of web pages and online resources; they provide users with the opportunity to access an ever-evolving array of online content and communication tools. Adult patrons can and should make their own choices about what they want to read, and they have a right to make those choices unencumbered by mandatory filters that censor lawful content.

As we discussed in our 2009 amicus brief [9] to the Washington Supreme Court in this same case, such library censorship schemes are particularly worrisome because public libraries are often the

primary source of Internet access for people living in rural communities. In addition to threatening to widen that "digital divide" between the Internet haves and have-nots, government restrictions on lawful content – be they mandatory filters or broad censorship policies – raise serious constitutional issues that deserve more than a passing glance from a federal court. CDT will continue the fight for the rights of library patrons as such cases arise, including if and when this week's worrisome lower court decision is appealed to the Ninth Circuit Court of Appeals.

- Libraries
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- first amendment
- filtering
- CIPA
- ALA

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