

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ANAKA HUNTER,)	
)	
Plaintiff,)	
)	
v.)	No. 4:12-CV-4 ERW
)	
BOARD OF TRUSTEES, SALEM PUBLIC)	
LIBRARY, et al.,)	
)	
Defendants.)	

PLAINTIFF’S STATEMENT OF UNCONTROVERTED MATERIAL FACTS

Pursuant to E.D.Mo. L.R. 4.01(E), the following are uncontroverted material facts in support of Plaintiff’s Motion for Partial Summary Judgment:

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 42 U.S.C. § 1983. *Defendant Board of Trustee’s Answer to Plaintiff’s Complaint*, March 5, 2012 (Doc. #16) at ¶ 4 (admitting corresponding allegation); *Defendant Glenda Wofford’s Answer to Plaintiff’s Complaint*, March 5, 2012 (Doc. #17) at ¶ 4 (admitting corresponding allegation).

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(1) and E.D. Mo. L.R. 2.07(A)(1), (B)(2) because at least one Defendant resides in Dent County, Missouri, and the events giving rise to this Complaint occurred in Dent County, Missouri. Doc. #16 at ¶ 5 (admitting corresponding allegation); Doc. #17 at ¶ 5 (admitting corresponding allegation).

3. Plaintiff Anaka Hunter is an adult resident of Salem, Missouri. *30(b)(6) Deposition of Defendant Board of Trustees, Salem Public Library (Defendant Glenda Wofford, Designee)*, September 4, 2012 (Ex. 1) at p. 136.

4. Hunter pays the library tax, which is based on property tax and personal property tax. Id.
5. Salem Public Library is a public library located in Salem, Missouri. Doc. #16 at ¶ 7 (admitting corresponding allegation); Doc. #17 at ¶ 7 (admitting corresponding allegation).
6. The Salem Public Library was established pursuant to MO. REV. STAT. § 182.140. Doc. #16 at ¶ 7 (admitting corresponding allegation); Doc. #17 at ¶ 7 (admitting corresponding allegation).
7. The Salem Public Library’s primary source of funding is a library tax, which is based on property tax and personal property taxes and is collected by City of Salem, Missouri. Ex. 1 at p. 136.
8. Defendant Board of Trustees of the Salem Public Library (“Board”) is a body corporate that operates the Salem Public Library. Doc. #16 at ¶ 9 (admitting corresponding allegation); Doc. #17 at ¶ 9 (admitting corresponding allegation).
9. The Board is authorized by statute to sue and be sued. MO. REV. STAT. § 182.200; Doc. #16 at ¶ 9 (admitting corresponding allegation); Doc. #17 at ¶ 9 (admitting corresponding allegation).
10. Defendant Glenda Wofford is a resident of Dent County, Missouri. Doc. #16 at ¶ 10 (admitting corresponding allegation); Doc. #17 at ¶ 10 (admitting corresponding allegation).
11. Wofford is the director of the Salem Public Library and was so at all relevant times. Doc. #16 at ¶ 10 (admitting corresponding allegation); Doc. #17 at ¶ 10 (admitting corresponding allegation); Ex. 1 at pp. 9-10, 17.

12. David R. Hinkle is qualified with the knowledge, skill, experience, training, and education to offer expert testimony on the matters relating to Internet filtering about which he has been designated to opine to help the trier of fact to understand the evidence or to determine a fact in issue in this case. *Affidavit and Expert Report of David R. Hinkle*, September 28, 2012 (Ex. 5) at pp. 2, 9.

13. Hinkle has the knowledge, skill, experience, and training of a software developer in Internet filtering business, and his opinions are reliable. Ex. 5 at p. 9.

14. Dr. Joyce M. Latham is qualified with the knowledge, skill, experience, training, and education to offer expert testimony on the matters relating to Library Science about which she has been designated to opine to help the trier of fact to understand the evidence or to determine a fact in issue in this case. *Affidavit and Expert Report of Dr. Joyce M. Latham*, September 27, 2012 (Ex. 6) at pp. 4-6.

15. Latham has the knowledge, skill, experience, education, and training of a librarian, and her opinions are reliable. Ex. 6.

16. The *American Library Association Code of Ethics*, passed initially in January 1939, and amended over time, is the most critical document articulating the principals and values affecting the practice of librarianship. Those principles which stand out relative to the delivery of services to library users are:

We provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all requests.

We uphold the principles of intellectual freedom and resist all efforts to censor library resources.

We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted,

borrowed, acquired or transmitted.

We distinguish between our personal convictions and professional duties and do not allow our personal beliefs to interfere with fair representation of the aims of our institutions or the provision of access to their information resources.

Ex. 6 at pp. 6-7.

17. Later that same year (1939), the American Library Association membership passed by popular acclimation at their annual meeting the *Library Bill of Rights*, a foundational document for public library acquisition policies. It states that libraries are “forums for information and ideas.” The principles which stand out relative to library users and their access to resources are:

Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment (see Appendix for full document).

Id. at p. 6.

18. Defendants recognize the validity of the ALA *Library Bill of Rights* because the Salem Public Library Statement on Intellectual Freedom incorporates the ALA *Library Bill of Rights* into its own policy. Id. at p. 12; *Salem Public Library Bylaws* [authenticated by Wofford in Ex. 1 at p. 20] (Ex. 16).

19. Beginning in or about July 2010, Hunter conducted research at the Salem Public Library on Native American tribes and their spirituality. Ex. 1 at p. 134; *Affidavit*,

February 15, 2013 (Ex. 4), *Attachment to Affidavit* (Attachment A) at p. 1; Ex. 1 at p. 134; *Wofford's Log of Hunter's Activities and Research (October 28, 2010 – December 9, 2010)* [See Ex. 2 at ¶ B.6; authenticated by Wofford in Ex. 1 at pp. 162, 172, 195] (Ex. 24) at pp. 1-2; *Salem Public Library's Computer Sign-in Logs (July 5, 2010 – December 6, 2010)* [See Ex. 2 at ¶ B.13; authenticated by Wofford in Ex. 1 at pp. 185-186] (Ex. 25) at pp. 1, 3, 6-11, 13-14, 17, 19-21, 24-26, 28-38, 40.

20. Hunter's research methods included accessing the Internet from computers made available for public use by the Salem Public Library. Ex. 1 at p. 134; Ex. 4.A at p. 1; Ex. 24 at pp. 1-2; Ex. 25 at pp. 1, 3, 6-11, 13-14, 17, 19-21, 24-26, 28-38, 40.

21. Hunter discovered that the Internet sites she wanted to access for information about Native American spirituality and related spirituality were blocked by the Salem Public Library's Internet Filter because the content she tried to view was classified as "Occult" or "Criminal Skills." *Ex. 1 at p. 134; Ex. 4.A at p. 1; Ex. 24 at p. 1-2; Blocked Website Notices Printed by Plaintiff* [authenticated by Wofford in *Ex. 1 at pp. 105-106*] (*Ex. 26*).

22. Hunter first brought the improper blocking to the attention of Wofford in or about July 2010. Ex. 4.A at p. 2.

23. When Hunter first brought the improper blocking to the attention of Wofford, Hunter requested that the Internet sites she tried to view on Native American cultural and religious history and the Wiccan Church be unblocked for her research. *Id.*

24. Wofford responded that there was nothing she could do and that it was up to the filtering system what Internet content library patrons could view. Ex. 4.A at p. 2; Ex. *Salem Public Library's Content Filtering Account Change Log (April 30, 2009 - January*

10, 2012) [See Ex. 2 at ¶ B.18; authenticated by Wofford in Ex. 1 at pp. 124-125; and authenticated by MOREnet at Ex. 3 at pp. 60-61] (Ex. 23) at p. 35 (showing no changes in Internet content filtering in June or July 2010).

25. Hunter called Ms. Barbara Reading at the State Library in October 2010 to complain about, among other things, Salem Public Library's web filtering practice. Ex. 1 at pp. 165-166; *Wofford's Log of Hunter's Activities and Research (October 28, 2010 – December 9, 2010)* [See Ex. 2 at ¶ B.6; authenticated by Wofford in Ex. 1 at pp. 162, 172, 195] (Ex. 24) at p. 1.

26. Reading then called Wofford. Ex. 1 at pp. 165-166; Ex. 24 at p. 1.

27. During this call Reading articulated to Wofford, among other things, that Hunter complained about Salem Public Library's web filtering discriminating based on viewpoint. Ex. 1 at pp. 165-166; Ex. 24 at p. 1.

28. The day before this call from Reading (October 28, 2010), Wofford began maintaining a log of Hunter's visits to the library, research, complaints, and interactions with library employees and patrons. The log was maintained until December 9, 2010 (the day Wofford called the police and turned over the log to them). Ex. 24; See *supra* at ¶¶ 45-46.

29. Wofford's decision to track and Hunter's visits to the library, research, complaints, and interactions with library employees and patrons and ultimately provide this information to the police without subpoena is contrary to accepted public library standards. Ex. 6 at pp. 10, 11, 18.

30. After receiving the call from Reading, on or about October 29, 2010, Wofford met with Hunter in the Salem Public Library meeting room for approximately 50

minutes. Ex. 24 at p. 1; Ex. 4.A at p. 2.

31. During this meeting with Hunter on or about October 29, 2010, Wofford explained that she could override the filter to allow Hunter to view Internet content currently blocked. Ex. 24 at p. 1; Ex. 4.A at p. 2.

32. Subsequent to her discussion with Wofford on or about October 29, 2010, Hunter again complained about viewpoint discrimination and sought to have Internet content pertaining to Native Americans unblocked. Ex. 4.A at p. 2; Ex. 23 at pp. 35-37; Ex. 24 at pp. 1-2.

33. Despite having the capability to permanently unblock entire categories (e.g., “occult” or “criminal skills”), websites, or web pages, Wofford or other Salem Public Library employees never did so in response to Hunter’s post-October 29, 2010, requests to unblock Internet content. Ex. 23 at pp. 35-37.

34. Despite having the capability to temporarily unblock entire categories (e.g., “occult” or “criminal skills”), websites, or web pages for up to one hour, Wofford or other Salem Public Library employees never did so in response to Hunter’s post-October 29, 2010, requests to unblock Internet content. Ex. 23 at pp. 35-37.

35. On three occasions, in response to Hunter’s post-October 29, 2010, requests to unblock Internet content, Wofford or other Salem Public Library employees unblocked websites for only one minute. Ex. 23 at p. 37.

36. On one occasion, in response to a Hunter post-October 29, 2010, request to unblock Internet content, Wofford or other Salem Public Library employees unblocked a website for only five minutes. Ex. 23 at p. 35.

37. On six occasions, in response to Hunter’s post-October 29, 2010, requests to

unblock Internet content, Wofford or other Salem Public Library employees unblocked web pages or websites for only 10 minutes. Ex. 23 at pp. 35-37.

38. In response to Hunter's post-October 29, 2010, requests to unblock Internet content, Wofford or other Salem Public Library employees sometimes unblocked entire domains (e.g., www.witchcraft.com), but other times only unblocked single pages to some websites (e.g., www.deathreference.com/Me-Nu/Native-American-Religion.html and www.crystalinks.com/sundance.html), but other sections of those same websites (e.g., www.deathreference.com and www.crystalinks.com) remained blocked. Ex. 4.A at p. 3; Ex. 24 at pp. 1-2; Ex. 23 at pp. 36-37.

39. It was the custom, policy, and practice of Defendants to require Plaintiff to repeatedly request over blocked Internet content be unblocked. See *infra* at ¶¶ 32-38.

40. Subsequently, Hunter raised the issue of filtering again with Wofford, stating that she thought the filtering of the Internet content she tried to view was improper and the classification of Native American cultural and religious history and practices as the "occult" and "criminal skills" was misleading and derogatory. Ex. 4.A at p. 3.

41. Wofford responded that it was up to the filtering system which Internet content library patrons could view and that she only allows people to view blocked Internet content if it pertains to their job, if they are writing a paper, or if she determined that they otherwise have a legitimate reason to view the content. Ex. 4.A at p. 3.

42. Wofford's belief that she had the authority to allow, or not allow, patrons to view websites was consistent with the Defendants' written "Public Access Microcomputer Policy" which states that states that "[t]he use of the Internet system is a privilege which can be revoked by the library at any time for abusive conduct[,] [with the] Salem Public

Library [as] the sole arbiter of what constitutes abusive conduct.” Ex. 1 at pp. 65-75; *Salem Public Library Public Access Microcomputer Policy* [See Ex. 2 at ¶ B.3; authenticated by Wofford in Ex. 1 at p. 58] (Ex. 17) at p. 2.

43. Wofford additionally asserted that she had an obligation to call the proper authorities to report those who were attempting to access blocked sites if she thought they would misuse the information they were attempting to access. Ex. 4.A at p. 4.

44. Wofford’s assertion that she would be obligated to notify authorities caused Plaintiff to be reasonably concerned that she would be reported to the police if she continued to attempt to access Internet content about Native American cultural and religious history and the Wiccan Church.

45. On or about December 9, 2010, Wofford did call the Salem City Police about Plaintiff’s complaints regarding Internet filtering. Ex. 1 at pp. 172-189; *Police Report from Wofford’s Complaint*, December 9, 2010 [produced by Defendants in Response to Plaintiff’s Request for Production #14; authenticated by Wofford in Ex. 1 at pp. 188-189] (Ex. 29) at p. 1.

46. When the police came to the Salem Public Library, Wofford disclosed the log that she had maintained describing in detail Hunter’s activities and research at the Salem Public Library between October and December 2010. Ex. 1 at pp. 172-189; Ex. 29 at pp. 1-7; see also *supra* at ¶¶ 28-29.

47. Prior to Wofford calling the Salem Police, Hunter had last visited the library on December 2, 2010. Ex. 1 at p. 174; Ex. 25 at p. 40.

48. Since the Salem Police were called on December 9, 2010, Hunter has not yet returned to the Salem Public Library. Ex. 1 at p. 174; Ex. 25 at pp. 40 ff.

49. It did not bother Wofford that Hunter never returned to the Salem Public Library after she called the Salem Police and disclosed the log of Hunter's activities and research. *Id.* at p. 179.

50. Hunter attended a meeting of the Board of Trustees for the Salem Public Library on November 8, 2010. Doc. #16 at ¶ 23 (admitting corresponding allegation); Doc. #17 at ¶ 23 (admitting corresponding allegation); Ex. 1 at pp. 132-138; *Salem Public Library Board of Trustees Meeting Minutes for November 2010 Meeting* [See Ex. 2 at ¶ B.2; authenticated by Wofford in Ex. 1 at pp. 132-133] (Ex. 27); Ex. 4.A at p. 4.

51. At the Board meeting, Hunter voiced her concerns about the filtering and the policies, practices, and customs that block religious content based upon its viewpoint and noted that it was unfair. Ex. 1 at pp. 132-138; Ex. 27; Ex. 4.A at p. 4.

52. A member of the Board responded that the Salem Public Library's Internet Content Filtering ("ICF") system would not change, adding, "If that's all, we have business to discuss." Ex. 4.A at p. 5.

53. Internet filtering was also discussed at Board of Trustees for the Salem Public Library on December 9, 2010. Ex. 1 at pp. 139-145; *Salem Public Library Board of Trustees Meeting Minutes for December 2010 Meeting* [See Ex. 2 at ¶ B.2; authenticated by Wofford in Ex. 1 at p. 139] (Ex. 28).

54. Wofford and the Board knew that their filtering policies, practices, and customs resulted in unnecessary and over blocking of Internet content Plaintiff tried to view. Ex. 1 at pp. 132-145; Ex. 27; Ex. 28.

55. The Salem Public Library receives federal Library Services and Technology Act ("LSTA") grants. Doc. #16 at ¶ 27 (admitting corresponding allegation); Doc. #17 at ¶

27 (admitting corresponding allegation); *Wofford's Sunshine Act Response to ACLU Request*, July 19, 2011 [authenticated by Wofford in Ex. 1 at pp. 183-184] (Ex. 30) at pp. 8-9.

56. Because it receives LSTA grants, the Salem Public Library is obligated to comply with CIPA. Doc. #16 at ¶ 28 (admitting corresponding allegation); Doc. #17 at ¶ 28 (admitting corresponding allegation); Ex. 1 at pp. 49, 57, 148; Ex. 30 at pp. 8-9.

57. CIPA requires that libraries maintain a policy and ICF systems to prevent children from accessing “visual depictions” that are obscene, child pornography, or harmful to minors. Ex. 5 at p. 5; Ex. 6 at pp. 6-9; See also Ex. 1 at pp. 50-51 (identifying only [p]ornography [and] nudity” as the only things libraries must filter); *Federal Communications Commission Consumer Facts Summary of CIPA* [See Ex. 2 at ¶ B.11] (Ex. 31).

58. CIPA applies only to visual depictions; it does not apply to text. Ex. 5 at p. 5; Ex. 6 at pp. 8-9; Ex. 31.

59. The Salem Public Library, like all other public libraries in Missouri, is also obligated to comply with MO. REV. STAT § 182.827.3. Ex. 1 at pp. 48-57.

60. MO. REV. STAT. § 182.827.3 requires that libraries “limit minors’ ability to gain access to material that is pornographic for minors.”

61. Wofford understood the filtering requirements of CIPA and Missouri state law were limited to content such as pornography. Ex. 1 at pp. 50-51; Ex. 30 at pp. 8-9.

62. To comply with CIPA, the Salem Public Library must utilize a “technology protection measure.” 20 U.S.C. § 9134(f); 47 U.S.C.A. § 254.

63. To comply with Missouri law, the Salem Public Library must either equip its publicly accessible Internet-connected computers with ICF software or purchase Internet connectivity from an Internet service provider that provides ICF filter services to limit access to material that is pornographic for minors. MO. REV. STAT. § 182.827.3.

64. The Salem Public Library purchases Internet connectivity from MOREnet, an Internet service provider, that provides ICF services. Ex. 1 at pp. 49-50; *Deposition of Missouri Research & Education Network (MOREnet) (Connie Stickney, Designee)*, August 30, 2012 (Ex. 3) at pp. 24-36.

65. None of the Internet content Plaintiff was prevented from accessing or desires to view contains visual depictions that are obscene, child pornography, or harmful to minors. Ex. 1 at pp. 149-151; Ex. 4.A at p. 5.

66. None of the Internet content that Plaintiff was prevented from accessing or desires to view contains material that is pornographic for minors. Ex. 1 at pp. 149-151; Ex. 4.A at p. 5.

67. There is no reasonable basis to believe that any of the Internet content Plaintiff was prevented from accessing or desires to view contains visual depictions that are obscene, contain child pornography, or harmful to minors. Ex. 1 at pp. 149-151; Ex. 4.A at p. 5.

68. There is no reasonable basis to believe that any of the Internet content Plaintiff was prevented from accessing or desires to view contains material that was pornographic for minors. Ex. 1 at pp. 149-150; Ex. 4.A at pp. 5-6.

69. The Salem Public Library, through its Internet service provider, employs an ICF program known as Netsweeper and has done so since 2009. Ex. 1 at p. 79; Ex. 3 at pp.

24-36; Ex. 4.A at p. 6; *MOREnet Announcement Regarding Change to Netsweeper Internet Content Filtering*, March 16, 2009 [authenticated by Wofford in Ex. 1 at pp. 191-192] (Ex. 9); *Salem Public Library's MOREnet Renewal*, April 6, 2009 [authenticated by Wofford in Ex. 1 at pp. 83-84; and authenticated by MOREnet at Ex. 3 at p. 27] (Ex. 10); *Salem Public Library's MOREnet Renewal*, April 6, 2010 [See Ex. 2 at ¶ B.7; authenticated by Wofford in Ex. 1 at pp. 83-84; and authenticated by MOREnet at Ex. 3 at pp. 27-28] (Ex. 12); *Salem Public Library's MOREnet Renewal*, April 21, 2011 [See Ex. 2 at ¶ B.7; authenticated by Wofford in Ex. 1 at pp. 193-194] (Ex. 13).

70. The Salem Public Library has expended identifiable amounts of taxpayer funds to provide Internet access to the public. Doc. #16 at ¶ 38 (admitting corresponding allegation); Doc. #17 at ¶ 10 (admitting corresponding allegation); Ex. 1 at pp. 84-85; Ex. 10; Ex. 12; Ex. 13.

71. The Salem Public Library has expended identifiable amounts of taxpayer funds for the purchase of Internet service from MOREnet that includes Netsweeper filtering software and associated services. Doc. #16 at ¶ 38 (admitting corresponding allegation); Doc. #17 at ¶ 10 (admitting corresponding allegation); Ex. 1 at pp. 84-85; Ex. 10; Ex. 12; Ex. 13.

72. Early Internet filtering solutions were first developed for parents and private schools and therefore over blocked based on viewpoint – something Netsweeper continues to do. Ex. 5 at pp. 2-3.

73. Netsweeper assigns Internet content to categories. Ex. 1 at p. 110-111; Ex. 4.A at p. 6; Ex. 5 at p. 3; Ex. 6 at pp. 15-17; *Netsweeper Web Admin Guide*, 2009 [authenticated by MOREnet at Ex. 3 at p. 71] (Ex. 22) at p. 47.

74. Netsweeper provides more than 50 different URL categories users may select from in filtering Internet content. Ex. 22 at p. 47.

75. Netsweeper's categories include "adult image," "criminal skills," "extreme," "general," "IWF" (Internet content tagged by the Internet Watch Foundation as likely to contain images of child abuse), "occult," "pornography," and "religion." Ex. 3 at pp. 68-69; Ex. 4.A at p. 6; Ex. 5 at pp. 3, 5-7; Ex. 22 at pp. 48-60.

76. CIPA and Missouri law require libraries using Netsweeper to block only three of Netsweeper's categories: "adult image," "IWF," or "pornography," which are the categories that might contain visual depictions that are obscene, child pornography, harmful to minors, or are pornographic for minors. Ex. 4.A at p. 6; Ex. 5 at pp. 5-6; Ex. 6 at pp. 15-16.

77. Wofford knows federal and state law require the blocking of two or three categories only. Ex. 1 at 54-55.

78. Netsweeper allows library ICF administrators to determine which categories are allowed and which are blocked. Ex. 1 at 87-94; Ex. 3 at pp. 40; Ex. 4.A at p. 6; Ex. 5 at p. 3; Ex. 6 at pp. 15-18.

79. The MOREnet Service Policy provides that each library is responsible for determining the categories and specified websites that are allowed or blocked. Ex. 3 at pp. 40, 43-44, 96-99; *MOREnet Announcement Regarding Netsweeper Internet Content Filtering*, January 22, 2009 [authenticated by Wofford in Ex. 1 at p. 183] (Ex. 8); *MOREnet Email to Wofford Regarding Initial Netsweeper Content Filtering Configuration*, April 30, 2009 [authenticated by Wofford in Ex. 1 at pp. 96-97; and authenticated by MOREnet at Ex. 3 at p. 95](Ex. 11); *MOREnet Email Regarding Change to Default*

Internet Content Filtering Configuration, August 1, 2011 [authenticated by Wofford in Ex. 1 at p. 183](Ex. 14) at p. 1; *Salem Public Library's Completed MOREnet-hosted Internet Content Filtering Order Form*, August 1, 2011 [See Ex. 2 at ¶ B.16; authenticated by Wofford in Ex. 1 at pp. 92-93; and authenticated by MOREnet at Ex. 3 at pp. 38-39](Ex. 15).

80. At all relevant times, Wofford was the Salem Public Library's ICF administrator and determined which categories of content were allowed and which are blocked. Ex. 1 at pp. 87-94, 96; Ex. 11; Ex. 15; *Wofford-MOREnet Email Exchange Regarding Unblocking Websites*, February 26, 2010 [authenticated by Wofford in Ex. at pp. 90-91; and authenticated by MOREnet at Ex. 3 at pp. 41, 77, 86] (Ex. 20).

81. Netsweeper allows library ICF administrators to temporarily disable blocking entirely. Ex. 4.A at p. 8.

82. Wofford has temporarily disabled blocking entirely. Ex. 23 at p. 37.

83. Netsweeper allows library ICF administrators to permanently enable or disable blocking for specified categories. Ex. 1 at pp. 78-79, 87-94, 96; Ex. 3 at p. 40; Ex. 4.A at p. 8; Ex. 11; Ex. 20; Ex. 15; Ex. 22.

84. Wofford has (and prior to Hunter's requests had) permanently enabled and disabled blocking for specified categories. Ex. 1 at pp. 78-79, 87-94, 96; Ex. 11; Ex. 15; Ex. 20; Ex. 23 at pp. 34, 38-44.

85. Netsweeper allows library ICF administrators to temporarily disable blocking for specified categories. Ex. 1 at pp. 87-94, 96; Ex. 3 at pp. 36-54; Ex. 4.A at p. 7.

86. Wofford has (and prior to Hunter's requests had) temporarily disabled blocking for specified categories. Ex. 3 at pp. 65-66; Ex. 23 at pp. 4.

87. Netsweeper allows library ICF administrators to permanently block or unblock specified domains (i.e., entire websites). Ex. 1 at pp. 78-79, 94-96; Ex. 3 at pp. 47-48, 55-67; Ex. 4.A at pp. 7-8; *FAQs for MOREnet migrating to Netsweeper*, March 12, 2009 [See Ex. 2 at ¶ B.15; authenticated by Wofford in Ex. 1 at p. 54; and authenticated by MOREnet at Ex. 3 at p. 37] (Ex. 7) at pp. 1-2; Ex. 20; *MOREnet Instructions on Unblocking Websites*, February 26, 2010 [authenticated by Wofford in Ex. 1 at pp. 90-91; and authenticated by MOREnet at Ex. 3 at pp. 41, 77, 86] (Ex. 21); Ex. 22 at pp. 47, 61.

88. Wofford has (and prior to Hunter's requests had) permanently unblocked specified domains. Ex. 1 at pp. 78-79, 94-96, 118-119; Ex. 3 at pp. 55-59; Ex. 4.A at pp. 7-8; Ex. 23 at pp. 3, 6-7, 9, 11-14, 16, 34.

89. Netsweeper allows library ICF administrators to temporarily disable blocking for specified domains. Ex. 1 at pp. 94-96; Ex. 3 at pp. 36-67; Ex. 4.A at p. 7.

90. Wofford has (and prior to Hunter's requests had) temporarily disabled blocking for specified domains. Ex. 1 at pp. 94-96; Ex. 23 at pp. 1-46.

91. Netsweeper allows library ICF administrators to permanently disable the blocking for specified pages. Ex. 3 at pp. 53; Ex. 4.A at p. 8; Ex. 22 at pp. 47, 61.

92. Netsweeper allows library ICF administrators to temporarily disable the blocking for specified pages. Ex. 3 at pp. 36-67; Ex. 4.A at pp. 7-8; Ex. 22 at pp. 47, 61.

93. Wofford has (and prior to Hunter's requests had) temporarily disabled blocking for specified pages. Ex. 23 at pp. 1-46.

94. None of the Netsweeper configuration changes requires substantial time,

effort, or expertise on the part of library ICF administrators. Ex. 1 at pp. 123-124; Ex. 4.A at pp. 8-9; Ex. 5 at p. 3.

95. Wofford was at all relevant times, and remains, the Salem Public Library's ICF administrator with the ability to change Netsweeper's settings on the Salem Public Library's publicly accessible computer terminals. Ex. 1 at pp. 87-96; Ex. 4.A at p. 9.

96. Wofford and the Board were at all relevant times, and remain, the policymakers who determine Salem Public Library's policies, practices, and customs, including which categories to block or unblock. Ex. 1 at pp. 13-26, 48-57, 149-151; Ex. 4.A at p. 9; Ex. 16; Ex. 17; *Salem Public Library's Public Access Microcomputer User Agreement* [See Ex. 2 at ¶ B.3; authenticated by Wofford in Ex. 1 at pp. 180-181] (Ex. 18); *Salem Public Library's Computer Use Waivers for Children* [See Ex. 2 at ¶ B.3; authenticated by Wofford in Ex. 1 at pp. 181-182] (Ex. 19).

97. Until August 1, 2011, it was the policy, practice, and custom of Defendants to block Internet content categorized as "occult" and "criminal skills." Ex. 1 at pp. 13-26, 48-57, 141-143, 149-151; Ex. 4.A at p. 9; Ex. 11; Ex. 15.

98. Salem Public Library took no action to cause the change of August 1, 2011, that resulted in the unblocking of the "occult" and "criminal skills" categories. Ex. 1 at pp. 91-94; Ex. 14; Ex. 15.

99. The "occult" or "criminal skills" filters could again become enabled if MOREnet makes changes to its defaults and Salem Public Library takes not action to prevent the filters from being re-enabled. Ex. 14; Ex. 15.

100. Salem Public Library can reactivate the "occult" or "criminal skills" filters at any time. See *supra* at ¶¶ 78-80, 83-84, 96; Ex. 14, Ex. 15.

101. Blocking Internet content that Netsweeper categorizes as “occult” is not required CIPA. Ex. 1 at p. 142; Ex. 4.A at pp. 6, 13; Ex. 5 at pp. 5-6; Ex. 6 at pp. 15-16.

102. Blocking Internet content that Netsweeper categorizes as “occult” is not required by Missouri state law. Ex. 1 at pp. 55, 142; Ex. 4.A at pp. 6, 13; Ex. 5 at pp. 5-6; Ex. 6 at pp. 15-16.

103. The policy, practice, and custom of Defendants of blocking Internet content categorized as “occult” over blocked a substantial amount of web content. Ex. 5 at pp. 5-8; Ex. 6 at pp. 15-18.

104. Defendants know that the “occult” category substantially over blocks Internet content, including those the Plaintiff tried to view related to Native American cultural and religious history and the Wiccan Church. Ex. 1 at pp. 55, 122-123, 141-143, 150-151; Ex. 4.A at p. 9; Ex. 27; Ex. 28.

105. Netsweeper categorizes Internet content discussing minority religions, religious practices, and beliefs from a positive or neutral viewpoint as “occult,” including but not limited to:

- a. **About.com: Paranormal Phenomena** (paranormal.about.com), a viewpoint-neutral portal to news and discussions of paranormal issues [Ex. 4.A at p. 10];
- b. **All About Spirituality** (www.allaboutspirituality.org), discussing from a neutral viewpoint numerous topics in spirituality, including angels, astrology, meditation, paganism, shamanism, and yoga [Ex. 4.A at p. 10];
- c. **Astrology.com** (www.astrology.com), discussing astrology and

- offering horoscope readings and similar services [Ex. 4.A at p. 10];
- d. **The Church and School of Wicca** (www.wicca.org), the official homepage of the Wiccan Church [Ex. 4.A at p. 10];
 - e. **Cult FAQ** (www.cultfaq.org), a viewpoint-neutral discussion of the cult phenomenon, including links to resources such as counseling and support for cult (ex-)members and their families [Ex. 4.A at pp. 10-11];
 - f. **The Encyclopedia of Death and Dying** (www.deathreference.com), containing viewpoint-neutral discussions of various cultures' and religions' ideas of death and death practices [Ex. 4.A at p. 11];
 - g. **Wikipedia: Wicca** (en.wikipedia.org/wiki/Wicca), a viewpoint-neutral discussion of the Wiccan Church [Ex. 4.A at p. 11]; and
 - h. **WitchVox** (www.witchvox.com), an overview of pagan belief systems, such as Druidism, Haitian Voodoo, Neopaganism, and Wicca [Ex. 4.A at p. 11].

106. Choosing to filter the “occult” category blocks non-mainstream religious beliefs such as Wicca and Native American Spirituality. Ex. 5 at p. 7.

107. In the Netsweeper manual, “occult” is described as a “category” that “includes websites involving the study of secret or hidden knowledge such as: cults, supernatural forces and events, occult lore, vampires, astrology, witchcraft, mysterious symbols, and other phenomena beyond ordinary understanding. It includes websites about these topics that are historical or factual in nature and/or promote such practices.” Examples given include websites on Wicca. Ex. 5 at p. 7 (citing to Exhibit 22 at p. 42).

108. At the same time, Netsweeper categorizes Internet content discussing mainstream religions (e.g., Christianity, Judaism, and Islam) and these mainstream religions' views *about* minority religions, religious practices, and beliefs as either “religion” or “general” (categories unblocked by Salem Public Library), including but not limited to:

- a. **Astrology and Horoscopes: The Bible and Christian View**
(<http://www.northforest.org/ChristianTopics/Astrology.html>), a discussion of astrology from a Christian viewpoint [Ex. 4.A at pp. 11-12];
- b. **Catholic Encyclopedia: Paganism**
(www.newadvent.org/cathen/11388a.htm), a discussion of Paganism from a Catholic viewpoint [Ex. 4.A at p. 12];
- c. **Christian Paranormal Answers** (christianparanormalanswers.com), a site that describes itself as “Answers about the Paranormal from a Christian viewpoint” [Ex. 4.A at p. 12]; and
- d. **What does the Bible say about Voodoo?**
(www.gotquestions.org/voodoo-Bible.html), a discussion of Voodoo from a Christian viewpoint; [Ex. 4.A at p. 12];

109. Blocking websites related to non-mainstream religious beliefs such as Wicca and Native American Spirituality, but allowing websites related to mainstream religious beliefs such as Christianity, Judaism and Islam, is viewpoint-based discrimination. Ex. 5 at p. 7.

110. The policy, practice, and custom of Defendants to block Internet content categorized as “occult” resulted in viewpoint-based discrimination. Ex. 5 at pp. 7-8; Ex. 6 at pp. 7, 15-19.

111. Defendants knew that blocking the “occult” category resulted in viewpoint-discrimination against non-mainstream religions and beliefs. Ex. 4.A at p. 12.

112. Until August 2011, it was the policy, practice, and custom of Defendants to block Internet content categorized as “criminal skills.” Ex. 1 at pp. 13-26, 48-57, 142-143, 150-151; Ex. 4.A at p. 13; Ex. 11; Ex. 15.

113. Blocking Internet content that Netsweeper categorizes as “criminal skills” is not required by CIPA. Ex. 1 at p. 142; Ex. 4.A at p. 13; Ex. 5 at pp. 5-6; Ex. 6 at pp. 15-16.

114. Blocking Internet content that Netsweeper categorizes as “criminal skills” is not required by Missouri law. Ex. 1 at pp. 55, 142; Ex. 4.A at p. 13; Ex. 5 at pp. 5-6; Ex. 6 at pp. 15-16.

115. The policy, practice, and custom of Defendants to block Internet content categorized as “criminal skills” over blocked a substantial amount of web content. Ex. 5 at pp. 5-8; Ex. 6 at pp. 15-18.

116. Defendants knew that blocking of the “criminal skills” category resulted in viewpoint-discrimination against non-mainstream religions and beliefs.

117. Defendants know that the “criminal skills” category over blocked Internet content, including the sites and pages the Plaintiff tried to view related to Native American cultural and religious history and the Wiccan Church. Ex. 1 at pp. 55, 142-143, 150-151; Ex. 4.A at p. 13.

118. The policy, practice, and custom of Defendants to block Internet content

categorized as “criminal skills” resulted in viewpoint-based discrimination. Ex. 5 at pp. 7-8; Ex. 6 at pp. 7, 15-19.

119. At all relevant times, it was Defendants’ policy, practice, and custom to impose substantial burdens for patrons seeking to unblock Internet content that was over blocked by the Salem Public Library’s ICF. See *surpa* at ¶¶ 22-24, 32-48, 50-52.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and a copy was made available electronically to all electronic filing participants.

/s/ Anthony E. Rothert