

**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.)	

Declaration of David Hinkle

I, David Hinkle, declare as follows:

1. My name is David Hinkle. I have been asked to submit an expert report in Hunter v. Board of Trustees, Salem Public Library, et al., No. 44:12-cv-4 ERW. I am over the age of 18 and legally competent to make an affidavit and do so on the basis of personal knowledge.
2. A true and accurate copy of that report, including the disclosures required under FED. R. CIV. P. 26(a)(2)(B) is attached to this declaration and is incorporated herein by reference. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 28, 2012.


David R. Hinkle

1. I am a self-educated software developer who has worked in the software development field since 1996. Beginning in 1999, I developed the software now known as “CIPAFilter,” which is sold to public schools and libraries to meet the requirements of the Children’s Internet Protection Act (“CIPA”) and is now installed in over 1000 schools nation wide. Since 1999 I have been employed by DerbyTech, Inc., the licensor of CIPAFilter as the Senior Software Architect. At Derbytech I lead the team of software developer that continues to develop CIPAFilter, and am responsible for the technical decision making regarding how the product is made to work. Through my work at DerbyTech, Inc., I have over twelve years of direct experience with the Internet filtering industry, particularly in connection with the technologies used in filters supplied to public schools and public libraries and how they are used to meet the requirements of CIPA. I am also familiar with Netsweeper, the Internet Content Filtering (“ICF”) system used by the Salem Public Library (“SPL”).

2. Internet filtering solutions first appeared not long after the public began using the Internet in the 1990s. Most of the early filtering solutions were developed for parents and private schools. Some of those filters were designed to filter out more than sexually explicit content -- for example, some filters designed for religious schools and parents also filtered out websites regarding religious practices that they found objectionable.

3. When Congress passed CIPA in 2000, a new market was created for Internet filtering for public schools and public libraries that receive E-rate funding for internet service -- such as SPL. At that time, I realized there would be a need for a filter that would filter out sexually explicit content but would otherwise be viewpoint-neutral—that is, not seeking to filter out any content beyond sexually explicit content, and not seeking to filter any other content based on political, ideological, religious, or other viewpoints. I developed CIPAFilter along

those lines.

4. Netsweeper, the Internet filtering solution used by Morenet (SPL's Internet Provider), works by grouping large collections of websites together by category. For example, a website on Catholicism would be placed in the "Religion" category. Entire categories can be selected by customers to "block". When a category is blocked, users on the network cannot view any website within that category. In addition, individual websites in otherwise unblocked categories can be blocked. Furthermore, categories and individual websites which are blocked can be "unblocked" (Alternatively referred to as "Allowed") -- both permanently or temporarily. Users will then be able to view the websites within that unblocked category normally, either permanently or until the temporary rule allowing access to the web site has expired.

5. Netsweeper offers a large number of categories, some of which are required by the CIPA. Others are not suitable for use in a public organization. These categories can, and should, be turned off in a public library setting (see paragraph 10, below). It is my opinion that Morenet designed their network to easily enable their customers to tailor the category selection to their needs. This is supported by the deposition of Ms. Wofford who testified that the configuration could be changed in a "matter of a couple minutes" (Deposition of Ms. Wofford, page 123). Temporarily disabling a category for a patron, an option that was never offered to Ms. Hunter (Deposition of Ms. Wofford, page 143), could be done in "Thirty Seconds".

6. I conclude that Salem Public Library ("SPL") --particularly the Library Director Glenda Wofford-- had complete control over the filtering choices, configuration changes, and implementation; knew they had complete control over filtering configuration and implementation; and had a policy that overblocked content well beyond what is required by CIPA and resulted in discrimination by unnecessarily filtering out both entire topics or

categories of content and specific viewpoints within topics or categories.

7. Salem Public Library's Complete Control Over Filtering Choices:

a) Initially Blocked Categories. On April 30th 2009, when Morenet was transitioning from another internet filtering system to Netsweeper, Ms. Rebecca Wall of Morenet emailed Glenda [Wofford]. (Exhibit 14 to Stickney's Deposition). In this email, Ms. Wall relayed what categories would be filtered by "default." In the filtering industry, a "default" option is one preselected for the convenience of the user, that the user can then change to suit their specific circumstances. Ms. Wall stated that "Exceptions can be allowed for all of these categories for any reason".

b) Permanently Changing Blocked Category List. The capacity to permanently change or reconfigure category choices is available at the library-level with Netsweeper. This capability was acknowledged in both the deposition of Ms. Stickney from Morenet and by Ms. Wofford. Once such change, in this case made by Morenet at the request of SPL, is noted in Exhibit 8 to Ms. Stickney's Deposition. In the records I reviewed, however, I found no example of Ms. Wofford permanently adding or removing a category from the block list.

c) Temporarily Unblocking Blocked Categories. The capacity to temporarily change or reconfigure category choices is available at the library-level with Netsweeper. This capability was acknowledged in both the deposition of Ms. Stickney and Ms. Wofford. Ms. Wofford noted that doing this would take "thirty seconds." I found only one example of a blocked category being unblocked by SPL - The "New URL" category on May 14th, 2009 at 8:31 a.m.

d) Permanently and Temporarily Unblocking Individual Websites. The capacity to permanently or temporarily block and unblock individual websites is available at the library-level with Netsweeper. This capability was acknowledged in both the deposition of Ms.

Stickney and Ms. Wofford. Reviewing the contents of the "Salem Web Admin logs" (Exhibit 9 to Ms. Stickney's Deposition) demonstrates that Salem routinely made changes to their filter configuration. For example, in this log the Missouri Lottery website was permanently added list of websites called the "Deny Page Allow Url List" on May 11th 2009.

8. Salem Public Library's Web Filtering "Policy." Ms. Wofford, in her deposition, spoke of SPL's policy of complying with CIPA. The "Public Access Micro Computer Policy" (in the SPL Bylaws) to which cited is not, however, a "filtering policy" against which I could evaluate compliance with CIPA and software compatibility. While I am aware of no stand alone document explicitly articulating the clear outlines of a SPL's web filtering policy, I would conclude that the filtering policy was comprised by their settings inside the Netsweeper filter which I can evaluate.

9. The Child Internet Protection Act only requires schools and libraries to block visual depictions that are a) obscene; (b) child pornography; or (c) harmful to minors. CIPA specifically does not apply to anything other than visual depictions such as photos or illustrations (e.g., it does not apply to text). CIPA specifically limits "harmful to minors" only to graphical depictions of a prurient nature. CIPA specifically allows for the filter to be turned off for adults doing research.

10. As configured from April 2009 until July 2011, (Exhibit 14 to Stickney's Deposition) the SPL's filtering policy excessively overblocked, relative to CIPA requirements, categories of web content.

a) My opinion is that while there still likely be some overblocking that could be redressed by either (1) a policy of prompt unblocking of improperly blocked websites or (2) technical measures allowing adults to automatically unblock themselves (see paragraph 13),

CIPA requires that libraries like SPL using Netsweeper block the following three categories - Adult Image, Pornography, and IWF (IWF Contains websites that host child pornography). The categories each vendor offers is different, so other products would have a different selection.

b) Starting in April of 2009 the SPL blocked significantly more than required by CIPA. Categories that the SPL blocked that are not required by CIPA include Alcohol, Alternative Lifestyles, Criminal Skills, Extreme, Hate Speech, Gambling, Humor, Journals and Blogs, Match Making, Occult, Profanity, Substance Abuse, and Weapons.

c) On February 26th, 2010, after seeking permission from Ms. Wofford, Morenet's Mr. Craig Nichols changed SPL's category configuration (Deposition of Ms. Stickney, Ex 8). It is unknown exactly which categories were activated. We do know 11 categories were still selected/blocked (Deposition of Ms. Stickney, Ex 10). We also know that Occult and Criminal skills were still being blocked (Deposition of Ms. Stickney, Ex 11). Given my opinion that only four Netsweeper categories are required to be blocked by CIPA, there was still significant and unnecessary overblocking by SPL.

d) These issues related to Ms. Hunter's lawsuit (i.e., the blocking of the Occult and Criminal Skills categories) were corrected on August 1st, 2011 (Exhibit 7), when the filtering was permanently reconfigured to block only five categories -- and no longer block those two categories.

e) These choices SPL made regarding blocking categories, from April 2009 until July 2011, beyond what CIPA required resulted in discrimination by unnecessarily filtering out entire topics or categories of content.

11. As configured from April 2009 until July 2011, (Exhibit 14 to Stickney's Deposition) the Salem Public Library filtering resulted in viewpoint based discrimination because:

a) SPL blocked the "Occult" category but not the general "Religion" category. It is well understood in the filtering industry that a category that blocks "Occult" blocks non mainstream religious beliefs such as Wicca and Native American Spirituality. In the netsweeper manual provided by Morenet (Exhibit 43 to Wofford's Deposition), "Occult" is described on page 42 as follows: "This category 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. In my opinion, 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.

c) SPL blocked websites categorized as "Hate Speech."

d) SPL blocked websites with a positive outlook on homosexuality by blocking the "Alternative Lifestyles" category but not sites with a negative outlook that would be included in the "Religion" category.

e) As noted above, blocking these categories is not necessary under CIPA.

12. Even after Ms. Ana Ka Hunter complained about the viewpoint discriminatory policy directly to the the library and the library's board of directors, Salem Public Library took no corrective action, despite having the capability to unblock, in a matter of "minutes," the entire

category "Occult," the blocking of which is not required by CIPA (something Ms. Wofford acknowledged in her deposition).

13. Finally, it is my expert opinion that there is another inexpensive technical solution --in addition to the easy unblocking of the Occult category evident with respect SPL's dealing with Ms. Hunter -- to the problems of over-filtering. Libraries can have either research computers available only for the use by adults or a provide logins which identify some patrons as adults.

a) Computers for use only by adults can comply with CIPA by being configured with what's called a "captive portal" system that presents a form to the user when they access the computer. On this form, the user can self identify as an adult doing research. The system can then disable the filtering for the user.

b) Alternatively, the library could issue usernames and passwords to users. Accessing the computer with an adult username and password could automatically disable the filtering.

A. Qualifications

I am a self-educated software developer who has worked in the software development field since 1996. Beginning in 1999, I developed the software now known as "CIPAFilter," which is sold to public schools and libraries to meet the requirements of the Children's Internet Protection Act ("CIPA") and is now installed in over 1000 schools nation wide. Since 1999 I have been employed by DerbyTech, Inc., the licensor of CIPAFilter as the Senior Software Architect. At Derbytech I lead the team of software developer that continues to develop CIPAFilter, and am responsible for the technical decision making regarding how the product is made to work. Through my work at DerbyTech, Inc., I have over twelve years of direct experience with the Internet filtering industry, particularly in connection with the technologies used in filters supplied to public schools and public libraries and how they are used to meet the requirements of CIPA. I am also familiar with Netsweeper, the Internet Content Filtering ("ICF") system used by the Salem Public Library ("SPL").

B. Exhibits

I only cite exhibits from the depositions of Ms. Stickney and Ms. Wofford.

C. Compensation

I am being compensated at the rate of \$100 an hour.

D. List of Publications

I haven't published anything for the consumption of the general public, except material used in the marketing of the CIPAFilter product.

E. Prior Testimony

I produced an expert opinion for "Parents, Families and Friends of Lesbians and Gays, Inc, Inc., v. Camdenton R-III School District". Case No. 2:11-CV-04212 in the United States District Court, Western District of Missouri, Central Division. I also testified at a hearing (Preliminary Injunction) in that case.

F. Facts Considered

The only things I considered for this case were the depositions of Ms. Stickney and Ms. Wofford, the exhibits provided to those depositions, and the discovery provided by Ms. Stickney.