

The Honorable Edward F. Shea

Thomas D. Adams
Celeste Mountain Monroe
KARR TUTTLE CAMPBELL
1201 Third Avenue, Suite 2900
Seattle, Washington 98101-3028
(206) 223-1313
Attorneys for North Central Regional Library District

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

13	SARAH BRADBURN, PEARL)	
14	CHERRINGTON, CHARLES)	
15	HEINLEN, and THE SECOND)	NO. CV-06-327-EFS
16	AMENDMENT FOUNDATION,)	
17	Plaintiffs,)	DEFENDANT NORTH CENTRAL
18	v.)	REGIONAL LIBRARY DISTRICT'S
19)	SUPPLEMENTAL STATEMENT OF
20	NORTH CENTRAL REGIONAL)	FACTS IN SUPPORT OF MOTION
21	LIBRARY DISTRICT,)	FOR SUMMARY JUDGMENT
22	Defendant.)	
23)	

Defendant North Central Regional Library submits the following
Supplemental Statement of Facts in Support of its Motion for Summary
DEFENDANT NORTH CENTRAL
REGIONAL LIBRARY DISTRICT'S
SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 1

CV-06-327-EFS
#661508 v1 / 42703-001

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1201 3rd Avenue
Suite 2900
Seattle, WA 98101

1 Judgment. Excepting where Defendants expressly agree with the factual
2 contentions contained in Plaintiff's Counterstatement of Facts in Opposition to
3 Defendants' Motion for Summary Judgment, NCRL disputes every factual
4 assertion in Defendant's Statement of Facts offered in support of its Motion for
5 Summary Judgment, Defendant's Counterstatement in Opposition to Plaintiff's
6 motion; and for the additional reasons stated herein.

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10 1. **Defendant's Fact # 7, contrary to Plaintiffs' Fact #1:** Dan Howard
11 also plays an important role in determining what categories and classifications
12 of Web sites should be blocked by NCRL's FortiGuard filter. (Ct. Rec. 49, ¶58.)

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14 2. **Defendant's Fact # 15, contrary to Plaintiffs' Fact #2:** Mr. Marney,
15 Director of the North Central Regional Library, is able to declare that NCRL is
16 responsible for working cooperative with public schools in its territory. As
17 Director, Mr. Marney manages the entire library district, to include all 28
18 branches (Ct. Rec. 49, ¶7). Mr. Marney has personal knowledge of what
19 NCRL's responsibilities are, particularly as it relates to NCRL's obligations
20 under RCW 27.12.020, which speaks directly to public libraries' responsibility
21 to work with public schools, as cited in NCRL's moving brief and referenced in
22 Ct. Rec 49, ¶2.

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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 2
CV-06-327-EFS
#661508 v1 / 42703-001

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1 3. **Defendant's Fact #21, contrary to Plaintiffs' Fact #3:** CIPA explicitly
2 defines the “technology protection measure” to include an internet filtering
3 device. See ¶1703(b)(1). Accordingly, NCRL is entitled to assert Fact #21 in
4 its statement – Ct. Rec. 49. The balance of Plaintiffs objection is argumentative
5 and inaccurate, particularly to the extent Plaintiffs’ claim that CIPA only allows
6 a library to block or filter Internet access to “visual depictions” that are
7 obscenity, child pornography or harmful to minors. CIPA expressly authorized
8 libraries to block or filter more than the three categories identified above. See
9 20 U.S.C. 9134(f)(2).
10

11 4. **Defendant's Fact #22, contrary to Plaintiff's Fact #4:** CIPA explicitly
12 gives librarian the option of disabling internet filters at an adult patron’s request,
13 and it does not require that such requests be granted. See ¶1721(D).
14 Accordingly, NCRL is entitled to assert Fact #22 in its statement (Ct. Rec 49).
15 NCRL objects to Plaintiffs’ contention that “although CIPA may not, on its face,
16 require that library filters be disabled at the request of adults, the First
17 Amendment of the United States Constitution and Art. I, § 5 of the Washington
18 State Constitution require such disabling.” Plaintiffs’ argument is precisely the
19 subject of this lawsuit and may not be asserted as fact.
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DEFENDANT NORTH CENTRAL
REGIONAL LIBRARY DISTRICT’S
SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 3

CV-06-327-EFS
#661508 v1 / 42703-001

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1 **5. Defendant's Fact # 23, contrary to Plaintiff's Fact #5:** Mr. Marney
2 may testify regarding the reasons why NCRL filters Internet access. NCRL
3
4 disputes Plaintiffs' suggestion that it is required to offer further authority, but to
5 the extent necessary authority can be found throughout NCRL's Statement of
6
7 Facts and its Motion for Summary Judgment.

8 The broad discretion afforded to NCRL is supported by express language in
9
10 *ALA v. United States* which discusses the traditional role of libraries in our
11 society. See *ALA*, 539 U.S. at 202; See also RCW 27.12.210(9) and (10).
12
13 NCRL's knowledge that filters help maintain a safe environment for patrons and
14 employees is based on the experience of its administrators. (Ct. Rec. 49, ¶¶86-
15 90). The fact that NCRL's policy facilitates compliance with CIPA is based on
16
17 the plain language of the statute, see ¶4 above.

18 Finally, NCRL objects to Plaintiffs' purported fact that "CIPA does not
19
20 require or permit NCRL to configure its Internet filter to block an enormous
21 quantity of constitutionally-protected speech, and does not require or permit
22
23 NCRL to deny request by adults to have the filter disabled." Plaintiffs' offer no
24
25 evidence that NCRL's filter blocks "an enormous quantity of constitutionally

1 protected speech” (see ¶32 below) and CIPA expressly permits NCRL to deny
2 an adult’s request to have the filter disabled. See ¶4 above.
3

4 **6. Clarify Defendant’s Fact #27 and Plaintiffs’ Fact #6:** Internet access
5 was gradually made available at NCRL branch locations. Plaintiffs’ correctly
6 note that the first branch with Internet access was NCRL’s Omak branch, which
7 went online in November 1999. (See attached Declarations of Barbara Walters,
8 ¶ 3; and Dean Marney at ¶3.) The second branch was NCRL’s Wenatchee
9 branch, which went online in January 2000. (Walters Decl. at ¶4; Marney Decl.
10 at ¶4). NCRL used a Surfwatch brand filter at both the Wenatchee and Omak
11 locations, however, the filtering software consistently froze the public use
12 computers that they were installed on. (Walters Decl. at ¶5; Marney Decl. at
13 ¶5). NCRL implemented its first system-wide Internet filter in December 2005
14 and that filter was referred to as “BESS.” (Walters Decl. at ¶6; Marney Decl. at
15 ¶6).
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21 **7. Clarify Defendant’s Fact #28 and Plaintiff’s Fact #7:** See ¶6 above.

22 **8. Defendant’s Fact #29, contrary to Plaintiff’s Fact #8:** Defendant’s
23 Fact #29 is not hearsay. The statement is based on Mr. Marney’s personal
24 knowledge of the fact that other library districts in the State of Washington were

1 using Internet filters, and that some were using "BESS." Mr. Marney will
2 testify to this in court. NCRL does not concede that the statistics themselves are
3 inadmissible because the public or business records exception applies.
4

5 **9. Defendant's Fact #30, contrary to Plaintiff's Fact #9:** BESS was the
6 operative filter at the time of the incidents giving rise to, and discussed, in
7 Plaintiff's Complaint. This is not refuted by any of the statements contained in
8 Defendant's attempted rebuttal. Moreover, although Ms. Cherrington now
9 claims she was denied access to youtube.com, she cannot actually establish that
10 she attempted her search while the Fortiguard filter was in place.
11
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13
14 NCRL has allowed access to all specific websites requested by Plaintiffs,
15 except some requested by Charles Heinlen. Certain requests were rejected by
16 NCRL administration because content was inconsistent with NCRL's Mission
17 and Collection Development Policy.
18

19 **10. Defendant's Fact #39, contrary to Plaintiff's Fact #10:** Defendant's
20 Fact #39 is not hearsay. The statement is based on Mr. Marney's personal
21 knowledge that FortiGuard provided its customers with an assurance of CIPA
22 compliance. Mr. Marney will testify to this in court. Contrary to Plaintiff's
23 claims, a copy of that certificate was attached Mr. Resnick's declaration as
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 6

CV-06-327-EFS
#661508 v1 / 42703-001

Karr Tuttle Campbell
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1 Ex. E. Mr. Marney's testimony is unchanged by Mr. Chasteen's testimony cited
2 by Plaintiffs regarding the existence or non-existence of an actual certification
3 process.
4

5 **11. Defendant's Fact #54 and Plaintiffs' #11:** It is unclear how Plaintiff's
6 Fact #11 actually clarifies Defendant's Fact #54. Mr. Heinlen may have, in fact,
7 attempted to access the various websites identified by Plaintiffs. Mr. Heinlen
8 has only formally requested that access to the personals section of the website be
9 granted. NCRL has denied Mr. Heinlen's request on the grounds that the
10 content often contains pornography and material harmful to minors. (See
11 attached Declaration of Dan Howard ¶7).
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15 **12. To clarify Defendant's Fact #55 and Plaintiffs' #12:** The court may
16 rely on the document attached as Ex. C to Barbara Walter's declaration, attached
17 to Defendant's original Statement of Facts in Support of its Motion for
18 Summary Judgment to clarify any typographical errors. Defendant's summaries
19 of Fortiguard's definitions set forth in Fact #55 do not, in any way, change the
20 meaning of the terms.
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24 **13. Defendant's Fact #59, contrary to Plaintiffs' #12:** Dean Marney does,
25 in fact, have personal knowledge of when Mr. Howard responded to unblocking

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 7

CV-06-327-EFS
#661508 v1 / 42703-001

Karr Tuttle Campbell
1201 3rd Avenue
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Seattle, WA 98101

1 requests that NCRL received after October 1, 2007 and may declare to the same.
2 Mr. Marney is copied on all correspondence related to this subject and is often
3 directly involved in the decision making process. To the extent necessary,
4 NCRL offers the attached declaration of Dan Howard in support of Defendant's
5 Fact #59. (Howard Decl. at ¶3).
6

8 NCRL has responded to all requests for unblocking provided a patron
9 provides contact information. (Howard Decl. at ¶4). The sites highlighted by
10 Plaintiffs in this section, including www.keyartpromotions.com,
11 www.artbyjohndan.com; www.pethandbook.com; www.firstthings1st.com; and
12 www.ourfamily-web.com have all been unblocked. (Id. at ¶5). NCRL refuses to
13 unblock image search sites on the grounds that it allows patrons to circumvent
14 the filter to obtain obscene, illegal or pornographic material. (Id. at ¶6).
15 However, NCRL does provide access to other image databanks and other
16 resources for the requested material. (Id.)
17

21 **14. Defendant's Fact #60, contrary to Plaintiffs' #14:** Plaintiffs' lack
22 personal knowledge to suggest that NCRL's policy of refusing to disable its
23 Internet filter is "not consistent with its mission to promote reading and lifelong
24 learning" or that the policy is "guaranteed to prevent adults from reading and
25 learning" or that the policy is "guaranteed to prevent adults from reading and
26 learning" or that the policy is "guaranteed to prevent adults from reading and
27 learning" or that the policy is "guaranteed to prevent adults from reading and
28 learning" or that the policy is "guaranteed to prevent adults from reading and

1 learning.” These statements notably do not include any citation to the record,
2 are purely argumentative and should be disregarded. The same is true for
3
4 Plaintiffs’ conclusion that there is no connection between NCRL’s filtering
5 profile and the safety of its branches. To the contrary, NCRL has set forth
6 specific evidence that the policy is consistent with its mission through the
7 declarations of Dean Marney and Dan Howard (Ct. Recs. 31 & 34). Both have
8 also declared as to the connection between filtering and branch safety. (Id.)
9
10

11 **15. Defendant’s Fact #61, contrary to Plaintiffs’ #15:** Although Plaintiff
12 believe NCRL’s policy does not comply with CIPA because they misread the
13 statute, NCRL’s expressly complies with CIPA. CIPA requires public libraries
14 seeking eligibility for federal “E-rate” and LSTA funds to install a filter on
15 public computers with internet capability to block visual depictions deemed to
16 be obscene, child pornography, or otherwise “harmful to minors.” 20 U.S.C.
17 9153(g); 47 U.S.C. 254(h). Plaintiffs maintain that NCRL’s filtering system
18 deviates from these principles in so much as NCRL’s filter blocks more than
19 “visual depictions” and that it does not limit its filtering to the three categories
20 enumerated in the statute (obscenity, child pornography and material that is
21 harmful to minors.) However, CIPA expressly allows libraries to filter more
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT’S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 9

CV-06-327-EFS
#661 508 v1 / 42703-001

Karr Tuttle Campbell
1201 3rd Avenue
Suite 2900
Seattle, WA 98101

1 than what is expressly discussed in the statute. 20 U.S.C. 9134(f)(2). Plaintiff's
2 also argue that CIPA only requires that minors, not adults, be precluded from
3 viewing material deemed harmful to minors. Nothing in CIPA mandates the
4 filter be completely disabled as Plaintiffs request.
5

6
7 **16. Defendant's Fact #62, contrary to Plaintiffs' #16:** Mr. Marney's
8 testimony is wholly consistent with the statute and based on his personal
9 knowledge. In fact, the citation at Fact #62 includes a reference to
10 Mr. Marney's Declaration at ¶19. Paragraph ¶19 contains a cite to the relevant
11 CIPA section. Plaintiff's objection is baseless.
12

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14 **17. Defendant's Fact #64, contrary to Plaintiffs' #17:** Mr. Marney's
15 testimony is wholly consistent with the statute and is based on his personal
16 knowledge. In fact, the citation at Fact #64 includes a reference to
17 Mr. Marney's Declaration at ¶34. Paragraph ¶34 contains a cite to the relevant
18 CIPA section. Plaintiff's objection is baseless.
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21 **18. Defendant's Fact #65, contrary to Plaintiffs' #19:** Mr. Marney's
22 testimony is wholly consistent with the statute and is based on his personal
23 knowledge. In fact, the citation at Fact #65 includes a reference to
24

1 Mr. Marney's Declaration at ¶35. Paragraph ¶35 contains a cite to the relevant
2 CIPA section. Plaintiff's objection is baseless.
3

4 **19. Defendant's Fact #66, contrary to Plaintiffs' #20:** Mr. Marney, as
5 Director of NCRL, is wholly qualified to discuss the measures his library district
6 took to research feasibility of disabling the filter for adult patrons, even if he did
7 not personally do the research. To the extent necessary, Barbara Walters, may
8 also offer testimony in support of the technological challenges. (Walters Decl.
9 at ¶9-10). Recent research has revealed that the specific technological
10 challenges include the need to either purchase additional authentication software
11 or hardware or a new filtering solution, otherwise NCRL would have to
12 designate one computer at each location for unfiltered access. (Id.)
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17 Plaintiffs may not testify as to whether disabling of the filter at the request of
18 adults would be consistent with NCRL's mission – as they attempt to do in
19 Plaintiffs' Fact #20. Plaintiffs' lack foundation. Moreover, Plaintiffs' may not
20 rely on Liam Chasteen's testimony regarding scope of technological challenges
21 in removing the filter. The question presented to Mr. Chasteen and offered by
22 Plaintiffs' does not specifically relate to NCRL. Plaintiffs' offer no evidence
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24
25 Mr. Chasteen has any personal knowledge of NCRL's network.

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 11
CV-06-327-EFS
#661 508 v1 / 42703-001

Karr Tuttle Campbell
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Suite 2900
Seattle, WA 98101

1 Internet access on all staff computers at all NCRL branches is filtered.
2 (Walters Decl. at ¶11). Staff computers at the administration building in
3 Wenatchee are filtered, but certain computers are enabled to review Internet
4 sites requested by patrons. (Id.) Notably, Ms. Walters declaration does not
5 contradict Mr. Marney's testimony. It appears that Plaintiffs' believe "here"
6 means all NCRL branches, as opposed to the administration building where the
7 deposition was physically conducted.
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11 **20. Defendant's Fact #67, contrary to Plaintiffs' #21:** NCRL has
12 established sufficient foundation for Fact #67. See ¶19 above.
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14 **21. Defendant's Fact #69, contrary to Plaintiffs' #22:** NCRL directs
15 Plaintiffs to NCRL's Fact #66 regarding the technological challenges referenced
16 in NCRL's Fact #69. Dean Marney and Barbara Walters are qualified to speak
17 on this issue based on their own research. This court should summarily reject
18 the declaration offered by Mr. Bennett Haselton, in which he states that
19 blocking: spam URL, malware, spyware, hacking and proxy avoidance do not
20 pose any security threat to the network. As an initial matter, Mr. Haselton has
21 not established that he has any knowledge of NCRL's network. Moreover,
22 Mr. Haselton has not established that allowing access to all of the websites
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 12
CV-06-327-EFS
#661508 v1 / 42703-001

Karr Tuttle Campbell
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Suite 2900
Seattle, WA 98101

1 contained in these categories does not pose a threat. For example, if NCRL
2 allows proxy avoidance, and people are able to use the content to avoid the
3 filter, they could presumably circumvent the filter and obtain information that
4 might otherwise be blocked to take down the network.
5

6
7 **22. Defendant's Fact #71, contrary to Plaintiffs' #23:** NCRL has adduced
8 evidence that allowing unfiltered access would create a risk to patrons or staff
9 and create an unacceptable risk or hostile atmosphere. (See Ct. Rec 49, ¶¶86-99
10 and Ex. A to Dean Marney Decl. attached hereto). Plaintiff's offer no evidence
11 in support of their contention to the contrary.
12

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14 **23. Defendant's Fact #74, contrary to Plaintiffs' #24:** Plaintiffs' fail to
15 offer any support their contention allowing unfiltered Internet access would not
16 put NCRL staff in the position of being unwelcomingly exposed to, and put in
17 the position of, having to confront patrons." Plaintiffs' statement should be
18 disregarded.
19

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21 **24. Defendant's Fact #84 and Plaintiffs' Fact #27:** Defendant's Fact #84
22 is not hearsay. The statement is based on Mr. Howard's personal knowledge
23 regarding the cost of recessed desks. Mr. Howard will testify to this in court.
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25 The fact that Plaintiff's counsel was able to identify other prices is irrelevant.

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 13

CV-06-327-EFS
#661508 v1 / 42703-001

Karr Tuttle Campbell
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Seattle, WA 98101

1 **25. Defendant's Fact #89, contrary to Plaintiffs' Fact #28:** As one of the
2 two individuals involved in determining what categories/classifications will be
3 blocked/unblocked under NCRL's current filtering profile, and as the person
4 responsible for dealing with staff concerns and complaints, Mr. Howard has
5 personal knowledge of a change in the prevalence of incidents where patrons
6 have obtained sexually explicit, child pornographic or obscene material and may
7 testify to the same. Plaintiffs' suggestion that there have been only three
8 incidents is inaccurate.

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12 **26. Defendant's Facts #90-98, contrary to Plaintiffs' Fact #29:**
13 Defendant's Facts #90-98 are not hearsay. Defendant does not offer the
14 individual stories for the truth of the matter asserted by each librarian or staff
15 member – but to demonstrate Mr. Howard's personal knowledge of staff
16 concerns, which further support NCRL's decision to offer filtered Internet
17 access as a way to protect its patrons and employees.

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21 **27. Defendant's Facts #90-98, contrary to Plaintiffs' Fact #30:**
22 Mr. Howard's description of the events in Facts #90-98 are admissible despite
23 the fact that they do not include the specificity that Plaintiffs' apparently desire
24

1 (i.e. number of incident, images viewed, etc...). Plaintiffs offer no authority to
2 the contrary.
3

4 Plaintiffs' also repeatedly suggest that NCRL may not use the word
5 "confrontation" to describe an encounter between staff and a patron unless it
6 rises to some unspecified level of anger or violence. This argument is not
7 supported by the plain meaning of the word or by any evidence offered by
8 Plaintiffs. Moreover, Plaintiff's offer no authority for their suggestion that
9 NCRL may only evaluate a librarian or staff member's concerns against an
10 "ordinary or reasonable" standard – nor can they show that staff concerns were
11 unreasonable.
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15 **28. Defendant's Facts #90-98, contrary to Plaintiffs' Fact #31:** Contrary
16 to Plaintiff's claims, NCRL disclosed all of its NCRL's branch librarians as
17 individuals likely to have discoverable information in its initial disclosures.
18 (Declaration of Celeste Monroe; ¶3, Ex. A). Plaintiffs' counsel elected not to
19 depose these individuals.
20
21

22 **29. Defendant's Facts #90-98, contrary to Plaintiffs' Fact #32:** NCRL's
23 discussion of two instances in which a minor saw pornographic images certainly
24 does not mean that there have only been two instances. Again, Plaintiffs'

1 counsel did not request that NCRL identify such examples in written discovery,
2 nor did it elect to depose any of the branch librarians. Furthermore, NCRL
3 obviously employs a filter to protect against the dissemination of pornography
4 and obscenity – and it is working. It is not clear how Plaintiffs’ attempts to
5 highlight an allegedly small number of incidents supports their contention that
6 the filter does nothing to protect children, patrons or staff. The evidence
7 demonstrates the opposite.
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11 **30. Defendant’s Facts #99, contrary to Plaintiffs’ Fact #33:** Plaintiffs’ cite
12 absolutely no authority for the legal argument made in Fact #33. Plaintiffs’
13 “fact” should be disregarded.
14

15 **31. Defendant’s Facts #105, contrary to Plaintiffs’ Fact #34:** Plaintiffs
16 also argue that self-censorship reduces the total number of requests for sites that
17 would have been wrongly blocked in the absence of self-censorship. In fact, if
18 patrons engage in self-censorship, that would reduce the number of correct
19 blocks. There is no reason that self-censorship would reduce the number of
20 blocks made in error.
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1 **32. Defendant's Facts #110, contrary to Plaintiffs' Fact #35:** Plaintiff's
2 claims that "NCRL patrons are denied access to Web pages and other URLs 311
3 times every day, and 113,360 times every year" may not be asserted as fact.
4

5 Similarly, Plaintiff's claim that "FortiGuard erroneously blocks 106 helper
6 images every day...and 38,688 helper images every year" may not be asserted
7 as fact. As set forth in Ct. Rec 32, Ex. A (pp. 13-28), Mr. Resnick did not count
8 as pornographic any helper image that was not itself pornographic, even if it was
9 an advertisement or link to a separate site that was. Accordingly, Plaintiff's
10 conclusions are likely overstating Mr. Resnick's findings because pursuant to its
11 policy, NCRL would block helper images that served as links to pornographic
12 websites.
13

14 Plaintiffs' objection to NCRL's alleged focus on sites rather than pages is
15 also misplaced. The FortiGuard filer rates individual URLs, not webpages. To
16 the extent that a web site is designed by assigning discrete web addresses
17 ("URLs") to each page then granular filtering in fact can be performed upon
18 patrons' request as occurred with www.craigslist.com. (See Dep. of Walters
19 cited at Ct. Rec. 41, ¶97).
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1 Plaintiffs' offer no evidentiary support for the fact that the actual number
2 of Web sites NCRL's filter erroneously block a week is "almost certainly larger
3 than 20." Clearly, there is no reason the number could not be less than 20.

4
5 Plaintiffs are taking Mr. Resnick's findings and playing the trick of
6 extrapolating out from a week to a year to argue that there will be a larger
7 number of errors in a year. But, the percentage of pages that people view that
8 are blocked (<1 in 3000) does not go up from such an extrapolation. If one is
9 trying to assess how much impact the incorrect blocks have on the universe of
10 library patrons or on the universe of people who try and reach library patrons by
11 publishing material on the web the comparison point should be the total number
12 of pages actually or potentially accessed. Using this methodology, the amount
13 of over-blocking could hardly be "substantial" in comparison to hundreds of
14 thousands of web pages that NCRL patrons visited in a week, or the hundred of
15 millions or billions of web pages that one could have visited.

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21 **33. Defendant's Facts #113, contrary to Plaintiffs' Fact #37:** See ¶9
22 above. None of the Plaintiffs contacted NCRL administration (Dean Marney or
23 Dan Howard) with a specific request to unblock a site prior to filing suit. (Ct.
24 Rec 31, ¶47-58).

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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 18
CV-06-327-EFS
#661508 v1 / 42703-001

Karr Tuttle Campbell
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1 **34. Defendant's Fact #123, contrary to Plaintiff's Fact #42:** There is no
2 evidence NCRL's Internet Filter denied Sarah Bradburn access to information
3 she requested relating to youth tobacco use as set forth in Fact #123.
4

5 **35. Defendant's Fact #124, contrary to Plaintiff's Fact #43:** For reasons
6 set forth in NCRL's Motion for Summary Judgment and Reply in Support of its
7 Motion for Summary Judgment, Sarah Bradburn cannot establish "injury in
8 fact" therefore she lacks standing to maintain her claim.
9
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11 **36. Defendant's Fact #130, contrary to Plaintiff's Fact #45:** With the
12 exception of youtube.com, Ms. Cherrington cannot articulate the specific sites
13 she was attempting to access. It is, therefore, unclear whether the sites even
14 contained protected speech and whether they were consistent with NCRL's
15 mission and collection development practices. Ms. Cherrington cannot defeat
16 NCRL's challenged to her standing with such generalized allegations.
17
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19 **37. Defendant's Fact #132, contrary to Plaintiff's Fact #46:** Youtube.com
20 is currently unblocked. For reasons set forth in NCRL's Motion for Summary
21 Judgment and Reply in Support of its Motion for Summary Judgment,
22 Ms. Cherrington cannot establish "injury in fact" therefore she lacks standing to
23 maintain her claim.
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 19
CV-06-327-EFS
#661 508 v1 / 42703-001

Karr Tuttle Campbell
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1 **38.To clarify Defendant's Fact #133, and Plaintiff's Fact #47:**

2 Ms. Cherrington alleges that she spoke with the Twisp branch librarian about
3 her concerns about the NCRL filter. Ms. Cherrington did not fill out a material
4 selection request form, nor did she speak with NCRL administration.
5

6 **39.To clarify Defendant's Fact #134, and Plaintiff's Fact #48:** As stated

7 above, Ms. Cherrington did not fill out a material selection request form to have
8 the site reviewed by NCRL administration. There is no evidence
9 Ms. Cherrington asked Twisp's librarian to follow-up on the alleged blocked
10 sites. Accordingly, NCRL administration did not have an opportunity to
11 investigate or potentially remedy Ms. Cherrington's concerns.
12

13 **40.To clarify Defendant's Fact #139, and Plaintiff's Fact #51:**

14 Mr. Heinlen is the only plaintiff who spoke to NCRL administration prior to
15 filing suit. As set forth in Defendant's Fact #139, he simply demanded the filter
16 be removed and did not request specific sites be unblocked.
17

18 **41.Defendant's Fact #141, contrary to Plaintiff's Fact #52:** Plaintiffs do

19 not dispute that Charles Heinlen believes NCRL patrons should have access to
20 pornography, content directed at illegal activity and constitutionally-unprotected
21 speech through NCRL computers. In fact, Mr. Heinlen's has specifically

22 DEFENDANT NORTH CENTRAL
23 REGIONAL LIBRARY DISTRICT'S
24 SUPPLEMENTAL STATEMENT OF
25 FACTS IN SUPPORT OF MOTION
26 FOR SUMMARY JUDGMENT - 20

27 CV-06-327-EFS
28 #661508 v1 / 42703-001

Karr Tuttle Campbell
1201 3rd Avenue
Suite 2900
Seattle, WA 98101

1 requested sites that contain such content, including the personals page on
2 craigslist.com, playboy.com and porno.com among others.

3
4 **42. Defendant's Fact #146, contrary to Plaintiff's Fact #55:** The claims
5 alleged in Plaintiff's Complaint occurred prior to NCRL's switch from the
6 BESS filter, to the FortiGuard filter. To the extent Sarah Bradburn and Pearl
7 Cherrington could not identify specific sites that they were trying to access, the
8 facts presented did not constitute a present case or controversy. In so much as
9 Pearl Cherrington seeks access to youtube.com, a present case or controversy
10 does not exist because NCRL patrons have access to this material. The same is
11 true with respect to the material available on SAF's website,
12 womenandguns.org.
13

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16
17 NCRL has allowed access to all of the specific websites requests by the
18 plaintiffs, excepting a small number of requests made by Charles Heinlen which
19 NCRL administration believe contain content that is inconsistent with NCRL's
20 mission and collection development practices. (Walters Decl. at ¶18).
21

22
23 **43. Defendant's Fact #149, contrary to Plaintiff's Fact #56:** Statements
24 within newspaper articles are self-authenticating and do not constitute hearsay if
25 the statements are offered not for the truth of the matter asserted but for some

26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 21

CV-06-327-EFS
#661508 v1 / 42703-001

Karr Tuttle Campbell
1201 3rd Avenue
Suite 2900
Seattle, WA 98101

1 other purpose such to show the effect on a party's state of mind. See *Price v.*
2 *Rochford*, 947 F.2d 829, 833 (7th Cir. 1991); *Carson Harbor Village Ltd. v.*
3 *Unocal*, 287 F.Supp.2d 1118, 1146 (C.D. Cal. 1995). NCRL does not offer the
4 case Brainerdispatch.com article to prove the facts of the case discussed therein,
5 but to illustrate NCRL's awareness of litigation involving library staff and
6 exposure to illicit materials on-line. As it is Mr. Marney who will testify to
7 NCRL's knowledge, the article has been attached to his accompanying
8 declaration at Ex. A.
9
10
11

12 **44. Defendant's Fact #150, contrary to Plaintiff's Fact #57:** Statements
13 within newspaper articles are self-authenticating and do not constitute hearsay if
14 the statements are offered not for the truth of the matter asserted but for some
15 other purpose such to show the effect on a party's state of mind. See ¶43 above.
16 NCRL does not offer the case Dallas Morning News article to prove the facts of
17 the case discussed therein, but to illustrate NCRL's awareness of the
18 proliferation of pornography when a public library offers unfiltered Internet
19 access. As it is Mr. Marney who will testify to NCRL's knowledge, the article
20 has been attached to his accompanying declaration at Ex. A.
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 22
CV-06-327-EFS
#661508 v1 / 42703-001

Karr Tuttle Campbell
1201 3rd Avenue
Suite 2900
Seattle, WA 98101

1 The proffered deposition testimony of Dean Marney does not support
2 Plaintiffs' contention that the Dallas library referenced in the article has a "very
3 different clientele" than NCRL – particularly as it relates to what some people
4 may want to view on the Internet. Moreover, NCRL objects to Plaintiffs'
5 suggestion that the Stark County District Library, the Fairbanks North Star
6 Borough or the Jefferson County Library district share any similarities with
7 NCRL. In fact, the deposition testimony of the individuals who are currently (or
8 were formerly) employed by these out-of-state libraries reveals that these
9 individuals have absolutely no basis upon which to draw any parallels. See
10 Declaration of Celeste Monroe (Ex. B, pp16-25, 52-55; Ex. C pp. 14-15; 49-50;
11 Ex. D 36-38; 47-49.)

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18 DEFENDANT NORTH CENTRAL
19 REGIONAL LIBRARY DISTRICT'S
20 SUPPLEMENTAL STATEMENT OF
21 FACTS IN SUPPORT OF MOTION
22 FOR SUMMARY JUDGMENT - 23
23 CV-06-327-EFS
24 #661508 v1 / 42703-001

Karr Tuttle Campbell
1201 3rd Avenue
Suite 2900
Seattle, WA 98101

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2 DATED this 3rd day of March, 2008.
3

4 KARR TUTTLE CAMPBELL

5 By: /s/ Thomas D. Adams

6 Thomas D. Adams, WSBA #18470

7 E-mail – tadams@karrtuttle.com

8 Celeste Mountain Monroe, WSBA #35843

9 E-mail – cmonroe@karrtuttle.com

10 Attorneys for Defendant North Central

11 Regional Library District

12 KARR TUTTLE CAMPBELL

13 1201 Third Ave., Ste. 2900

14 Seattle, WA 98101

15 Telephone: 206.233.1313

16 Facsimile: 206.682.7100
17
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 24

CV-06-327-EFS

#661 508 v1 / 42703-001

Karr Tuttle Campbell
1201 3rd Avenue
Suite 2900
Seattle, WA 98101

1 **CERTIFICATE OF SERVICE**


2 I hereby certify that on March 3, 2008, I electronically filed the foregoing with the Clerk of the Court
3 using the CM/ECF system which will send notification of such filing to the persons listed below:

4 Duncan Manville
5 1629 2nd Ave. W
6 Seattle, WA 98119

Aaron Caplan
ACLU of Washington
705 Second Ave., Ste. 300
Seattle, WA 98103

6 Catherine Crump
7 American Civil Liberties Union Foundation
8 125 Broad Street, 17th Floor
9 New York, NY 10004

10 KARR TUTTLE CAMPBELL

11 By: 
12 Heather L. White
13 hwhite@karrtuttle.com

14
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26 DEFENDANT NORTH CENTRAL
27 REGIONAL LIBRARY DISTRICT'S
28 SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 25
CV-06-327-EFS
#661 508 v1 / 42703-001

Karr Tuttle Campbell
1201 3rd Avenue
Suite 2900
Seattle, WA 98101