

The Honorable Edward F. Shea

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SARAH BRADBURN, PEARL
CHERRINGTON, CHARLES
HEINLEN, and the SECOND
AMENDMENT FOUNDATION,

Plaintiffs,

v.

NORTH CENTRAL REGIONAL
LIBRARY DISTRICT,

Defendant.

No. CV-06-327-EFS

**JOINT STATEMENT OF
UNCONTROVERTED FACTS**

Plaintiffs Sarah Bradburn, Pearl Cherrington, Charles Heinlen and the
Second Amendment Foundation, and Defendant North Central Regional Library
District submit this Joint Statement of Uncontroverted Facts pursuant to ¶ 4 of
the Court’s November 6, 2007 Scheduling Order and Fed. R. Civ. Pro. 56(d).

JOINT STATEMENT OF UNCONTROVERTED
FACTS – Page 1

1 **I. THE PARTIES.**

2 **A. Plaintiffs.**

3 1. Plaintiffs Sarah Bradburn, Pearl Cherrington and Charles Heinlen
4 are patrons of Defendant North Central Regional Library District (“NCRL”).
5 (Ct. Rec. 41, pg. 1-2.) Each uses, or has used, computers made available to the
6 public by NCRL to access the Internet. (Ct. Rec. 41, pg. 2.)

7
8 2. Sarah Bradburn is a resident of Republic, Washington. (Ct. Rec.
9 41, pg. 2.) She primarily uses NCRL’s Republic branch for Internet access and
10 other purposes. Id.

11 3. In October or November 2003 Ms. Bradburn attempted to conduct
12 Internet research regarding alcohol and drug-addiction topics in connection with
13 academic assignments. (Ct. Rec. 41, pg. 2.) Ms. Bradburn was unable to access
14 certain Web sites relating to youth tobacco usage, although she cannot recall the
15 sites specifically. (Ct. Rec. 41, pg. 2-3.) She believes access was blocked by
16 NCRL’s Internet filter. (Ct. Rec. 41, pg. 2-3; Ct. Rec. 57, pg. 21.)
17 Ms. Bradburn completed her research in Spokane where she was attending
18 school. (Ct. Rec. 41, pg. 3.)

19
20 4. Ms. Bradburn did not tell NCRL staff of her access difficulties
21 when the issues arose or at any other time prior to filing suit. (Ct. Rec. 49,
22 pg 32.) NCRL has had no opportunity to confirm that access in fact was blocked
23 and, if so, whether access was blocked by the Internet filter, a transient network
24 problem, or some other cause. Id.
25
26

1 5. Ms. Bradburn wishes to be able to have, on request, unfiltered
2 Internet access for lawful purposes at her local NCRL branch. (Ct. Rec. 57,
3 pg. 21.)

4 6. Pearl Cherrington is a resident of Twisp, Washington. (Ct. Rec. 41,
5 pg. 3.) She primarily uses NCRL's Twisp branch. Id.

6 7. Ms. Cherrington attempted to conduct Internet research in the
7 summer of 2005 through NCRL's network using a computer in the Twisp branch
8 on art and health-related topics. (Ct. Rec. 41, pg. 3; Ct. Rec. 57, pg. 21-22.)
9 Ms. Cherrington cannot recall the specific Web sites that she attempted to access
10 at that time other than a site maintained by an Idaho art gallery. Id. After the
11 filing of Plaintiffs' Complaint for Declaratory and Injunctive Relief
12 ("Complaint") in this case, Ms. Cherrington also attempted to access the
13 YouTube Web site. Id.

14 8. NCRL's Internet filter denied Ms. Cherrington access to the Idaho
15 art gallery Web site and a site containing health information. (Ct. Rec. 41, pg. 3;
16 Ct. Rec. 57, pg. 21-22.) NCRL's current filter denied Ms. Cherrington access to
17 YouTube. Id. NCRL no longer blocks access to YouTube. (Ct. Rec. 29,
18 pg. 33.)

19 9. Ms. Cherrington wishes to be able to have, on request, unfiltered
20 Internet access for lawful purposes at her local NCRL branch. (Ct. Rec. 57,
21 pg. 22.)

1 10. Charles Heinlen is a resident of Okanogan County, Washington.
2 Mr. Heinlen primarily uses NCRL's Omak and Okanogan branches. (Ct. Rec.
3 41, pg. 3.)

4 11. Mr. Heinlen attempted to use NCRL computers to conduct Internet
5 research, communicate with others via email, maintain a MySpace.com blog,
6 obtain information on firearms, and access various dating sites and other Web
7 sites. (Ct. Rec., pg. 3-4; Ct. Rec. 57, pg. 6.)

8 12. NCRL's Internet filter denied Mr. Heinlen access to images or
9 photographs embedded in commercial emails sent to his Hotmail and Yahoo!
10 Accounts, and to the Web sites listed in his answer to NCRL's Interrogatory
11 No. 5 and his Declaration in Opposition to Defendant's Motion for Summary
12 Judgment. (Ct. Rec. 41, pg. 4; Ct. Rec. 57, pg. 6.)

13 13. On February 23, 2008, while using an NCRL computer at the Omak
14 branch, Mr. Heinlen found that NCRL's Internet filter blocked access to the
15 following Web sites under the category Nudity and Risque (except
16 www.courting-disaster.com which was blocked under the category Adult
17 Materials):
18
19
20

21 www.netnude.com
22 aanr.com
23 www.artenuda.com/paintings2.asp
24 gregfriedler.com
25 billbrandt.com
26 www.ryoung-art.com
 www.courting-disaster.com
 www.mapplethorpe.org/index.html
 fineartnude.com/webring

1 (Ct. Rec. 57, pg. 6.)

2 14. Mr. Heinlen also attempted to access the “personals” section of
3 craigslist.org on February 23, 2008 through an NCRL computer. (Ct. Rec. 57,
4 pg. 6.) NCRL’s Internet filter denied him access to that portion of craigslist.org.
5 Id. Mr. Heinlen wishes to access the personals section of the Craigslist site in
6 the future. Id.

7
8 15. Mr. Heinlen has requested that NCRL’s Internet filter be disabled
9 during his computer sessions at NCRL branches. (Ct. Rec. 29, pg. 10; Ct. Rec.
10 62, pg. 20.) Mr. Heinlen is the only person to have made such a request to
11 NCRL prior to this lawsuit. Id. Mr. Heinlen maintains that he asked NCRL
12 staff to unblock a specific “personal Web site” in 2004, but his request was
13 denied. (Ct. Rec. 57, pg. 20.)

14
15 16. Ms. Cherrington and Mr. Heinlen deny ever having seen a
16 “Material Selection Review Form” – a form that NCRL made, and still makes,
17 available to patrons requesting the unblocking of specific Web sites. (Ct. Rec.
18 57, pg. 20.)

19
20 17. Mr. Heinlen wishes to be able to have, on request, unfiltered
21 Internet access for lawful purposes at his local NCRL branch. (Ct. Rec. 57,
22 pg. 23.)

23 18. Plaintiff Second Amendment Foundation (“SAF”) is a Washington
24 non-profit corporation dedicated to issues associated with the constitutional right
25 to keep and bear firearms. (Ct. Rec. 29, pg. 30-31; Ct. Rec. 41, pg. 4.) SAF is
26

1 headquartered in Bellevue, Washington. (Ct. Rec. 29, pg. 31; Ct. Rec. 41,
2 pg. 4.) SAF has approximately 650,000 contributing members and supporters
3 throughout the United States – including about 1,000 in Chelan, Douglas, Ferry,
4 Grant and Okanogan Counties. (Ct. Rec. 41, pg. 4.)

5
6 19. SAF maintains the Web site www.saf.org, and sponsors online
7 publications including Women & Guns (“The World’s First Firearms
8 Publication for Women”) at www.womenandguns.com. (Ct. Rec. 41, pg. 4-5.)

9
10 20. SAF wishes to communicate the contents of its Web site and
11 sponsored publications to Internet users in North Central Washington who may
12 rely on public library computers for Internet access. (Ct. Rec. 41, pg. 5.)

13
14 21. SAF was advised by one or more of its members that access to
15 www.womenandguns.com was blocked on NCRL’s computers. (Ct. Rec. 29,
16 pg. 31; Ct. Rec. 41, pg. 5; Ct. Rec. 49, pg. 2.) SAF has no personal knowledge
17 or experience confirming that access to the site had in fact been blocked. Id.
18 Plaintiff Heinlen attempted to access www.womenandguns.com in November
19 2006, but was prevented from doing so by NCRL’s Internet filter. (Ct. Rec. 57,
20 pg. 20.)

21
22 22. Prior to this lawsuit, NCRL had not received any report that access
23 to www.womenandguns.com was blocked. (Ct. Rec. 29, pg. 31.) Access to
24 www.womenandguns.com is not presently blocked and NCRL does not contend
25 that access to it should be blocked. Id. However, SAF is concerned that NCRL
26

1 will block that Web site (or another site sponsored by SAF) in the future. (Ct.
2 Rec. 57, pg. 20.)

3 **B. Defendant North Central Regional Library District.**

4 23. NCRL is an inter-county rural library district established in 1960 by
5 the citizens of Chelan, Douglas, Ferry, Grant and Okanogan Counties. (Ct. Rec.
6 29, pg. 2; Ct. Rec. 41, pg. 5.) NCRL was formed and operates under RCW
7 27.12 et. seq. and other statutes applicable to inter-county rural library districts.

8 Id.

9
10 24. NCRL's mission is to promote reading and lifelong learning.
11 (Ct. Rec. 29, pg. 6; Ct. Rec. 41, pg. 7.)

12
13 25. NCRL also is committed to supporting public education. (Ct. Rec.
14 29, pg. 4.)

15 26. Twenty-six school districts operate within NCRL's territorial reach.
16 (Ct. Rec. 29, pg. 4.) In 14 of those districts, NCRL branch libraries serve as the
17 de facto school library for children. Id.

18
19 27. NCRL provides library services throughout much of Chelan,
20 Douglas, Ferry, Grant and Okanogan Counties. (Ct. Rec. 29, pg. 2-3; Ct. Rec.
21 41, pg. 5.) NCRL maintains 28 branches, serving over 220,000 people. Id.

22 28. NCRL is funded by local property taxes, federal subsidies, and
23 private grants and endowments. (Ct. Rec. 29, pg. 2.)

24 29. NCRL receives federal assistance through the E-Rate program,
25 which provides for discounted Internet access and other telecommunications
26

1 services; and the Library Services and Technology Act, which provides for
2 grants to public libraries. (Ct. Rec. 41, pg. 6.)

3 30. NCRL is managed and controlled by a Board of Trustees (“the
4 Board”), which is responsible for issuing all policies for NCRL. (Ct. Rec. 29,
5 pg. 2.) The Board is comprised of two trustees from each of Chelan and Grant
6 Counties and one trustee from each of Douglas, Ferry, and Okanogan Counties.
7 Id.

8
9 31. NCRL’s operations are overseen and managed by a Director who is
10 appointed by the Board. (Ct. Rec. 29, pg. 2-3.) The Director also serves as
11 liaison between the Board and library employees. Id.

12
13 32. Dean Marney serves as NCRL’s Director. (Ct. Rec. 29, pg. 3.)
14 Mr. Marney was appointed Director in 1990. Id. He has been employed by
15 NCRL since 1977. Id.

16
17 33. NCRL maintains a collection exceeding 675,000 books and other
18 materials, all of which are available to patrons at any of NCRL’s 28 branches or
19 by order placed through NCRL’s Web site, www.ncrl.org. (Ct. Rec. 29, pg. 3.)

20
21 34. NCRL also offers its patrons access to materials by mail order.
22 (Ct. Rec. 29, pg. 3.) NCRL’s mail order service is one of the few remaining
23 mail services in the United States. Id.

24
25 35. NCRL’s branches vary in physical size. (Ct. Rec. 29, pg. 3.) The
26 largest is the Wenatchee branch which covers about 12,000 square feet of public
area. Id. The smallest is the Twisp branch which operates in approximately 701

1 square feet of public space. Id. The average size of an NCRL branch is
2 approximately 2,865 feet. Id.

3 36. There is a designated children's area in every NCRL branch but
4 only one branch has a wall or other partition physically separating the children's
5 section from the rest of the library. (Ct. Rec. 29, pg. 4.)

6 37. Twenty NCRL branches are staffed by one librarian. (Ct. Rec. 29,
7 pg. 4.)

8 38. Sixteen NCRL branches offer only one or two computers for public
9 use in accessing the Internet. (Ct. Rec. 29, pg. 4.)

10 **II. NCRL'S POLICIES.**

11 39. In furtherance of its mission, and to meet the diverse needs and
12 interests of its patrons, NCRL provides public Internet access at all of its
13 branches. (Ct. Rec. 41, pg. 7.)

14 40. Internet access through the NCRL network is subject to two
15 policies: the Internet Public Use Policy and the Collection Development Policy.
16 (Ct. Rec. 29, pg. 6-9.)

17 41. NCRL's Director, Dean Marney, and Dan Howard, NCRL's
18 Director of Public Services, interpret and apply the Internet Public Use and
19 Collection Development Policies. (Ct. Rec. 29, pg. 2-3, 17; Ct. Rec. 41, pg. 9,
20 15; Ct. Rec. 49, pg. 12-13; Ct. Rec. 57, pg. 1; Ct. Rec. 59, pg. 5-6; Ct. Rec. 62
21 pg. 2.)

22 42. NCRL's Collection Development Policy states:
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1 The North Central Regional Library District's Board of Trustees
2 recognizes that the library was created to serve all of the people
3 within the District's service area, regardless of race, age, creed, or
4 political persuasions. The Board of Trustees further recognizes that
5 within the District's service area there are individuals and groups
6 with widely disparate and diverse interests, cultural backgrounds,
7 and needs. The Board of Trustees, therefore, declares as a matter of
8 policy that:

- 9 1. The Collection Development Policy is based on and reflects the
10 District's mission, goals, and values as stated in the current
11 Strategic Plan.
- 12 2. Library materials shall be selected and retained in the library on
13 the basis of their value for the interest, information, and
14 enlightenment of all the people of the community in
15 conformance with the District's mission. Some of the factors
16 which will be considered in adding to or removing materials
17 from the library collection shall include: present collection
18 composition, collection development objectives, interest,
19 demand, timeliness, audience, significance of subject, diversity
20 of viewpoint, effective expression, and limitation of budget and
21 facilities.

22 No library materials shall be excluded because of the race,
23 nationality, political, religious, or social views of the author. Not
24 all materials will be suitable for all members of the community.

25 The District shall be responsive to public suggestion of titles and
26 subjects to be included in the library collection. Gifts of
materials may be accepted with the understanding that the same
standards of selection are applied to gifts as to materials
acquired by purchase, and that any gifts may be discarded at the
District's discretion.

To ensure a vital collection of continuing value to the
community, materials that are not well used may be withdrawn.

The Director is responsible to the Board of Trustees for
collection development. The Director may delegate collection
development activities to members of the staff who are qualified
by reason of education and training.

1 3. The Board of Trustees believes that reading, listening to, and
2 viewing library materials are individual, private matters. While
3 individuals are free to select or to reject materials for
4 themselves, they cannot restrict the freedom of others to read,
5 view, or inquire. The Board of Trustees recognizes that parents
6 have the primary responsibility to guide and direct the reading
7 and viewing of their own minor children.

8 The Board of Trustees recognizes the right of individuals to
9 question materials in the District collection. A library customer
10 questioning material in the collection is encouraged to talk with
11 designated members of the staff concerning such material. To
12 formally state his or her opinion and receive a written response,
13 a customer may submit the form provided for that purpose.

14 (Ct. Rec. 29, pg. 6-8.)

15 43. NCRL's Internet Public Use Policy states:

16 The mission of the North Central Regional Library is to promote
17 reading and lifelong learning. Internet access is offered as one of
18 many information resources supporting that mission.

19 The Internet is currently an unregulated medium. While the
20 Internet offers access to materials that are enriching to users of all
21 ages, the Internet also enables access to some materials that may be
22 offensive, disturbing, or illegal. There is no guarantee that
23 information obtained through the Internet is accurate or that
24 individuals are who they represent themselves to be. The library
25 district recognizes that it cannot fully control the amount of
26 material accessible through the Internet but will take reasonable
steps to apply to the Internet the selection criteria stated in the
Collection Development Guidelines and Procedures.

All Internet access on NCRL library computers is filtered.

The library district does not host customer e-mail accounts or
provide access to chat rooms.

The library district cannot guarantee privacy for individuals using
library public access computers to search the Internet and computer
screens may be visible to people of all ages, backgrounds, and
sensibilities. Customers are requested to exercise appropriate
discretion in viewing materials or submitting sensitive personal

1 information. Minors, in particular, are discouraged from sharing
2 personal information online.

3 Hacking and other unlawful online activities are prohibited.

4 The District's director is responsible for establishing procedures to
5 carry out this policy.

6 (Ct. Rec. 29, pg. 8-9.)

7 44. Public Internet access through the NCRL network is filtered and
8 has been filtered continuously since access was first made available in the late
9 1990s. (Ct. Rec. 29, pg. 5-6; Ct. Rec. 41, pg. 8.) NCRL does not and will not
10 disable the filter at the request of an adult patron. (Ct. Rec. 29, pg. 6; Ct. Rec.
11 41, pg. 8.)

12 **III. INTERNET FILTERING AT NCRL.**

13 **A. How Filtering is Accomplished.**

14 45. Prior to October 2006, NCRL had filtered Web content using a
15 software product called SmartFilter, Bess edition. (Ct. Rec. 41, pg. 13.)

16 46. In October 2006, as part of a comprehensive network and
17 cataloguing system upgrade, NCRL replaced its SmartFilter product with a web-
18 based filtering solution offered by Fortinet called the FortiGuard Web Filtering
19 Service ("FortiGuard"). (Ct. Rec. 29, pg. 11; Ct. Rec. 41, pg. 13.)

20 47. The FortiGuard service has two primary components: the
21 FortiGuard Rating Server and the FortiGate firewall/proxy unit. (Ct. Rec. 35,
22 pg. 2; Ct. Rec. 41, pg. 13.)

1 48. The server is a database maintained by Fortinet. (Ct. Rec. 35, pg. 2;
2 Ct. Rec. 41, pg. 13.) It catalogues more than 43 million Web sites and over two
3 billion individual Web pages. (Ct. Rec. 29, pg. 11; Ct. Rec. 35, pg. 2.) Using a
4 combination of proprietary algorithms and human review, Fortinet sorts sites
5 and pages into 76 categories based upon their predominant content, and also
6 assigns some Web sites to one of seven classifications based on media types and
7 sources. (Ct. Rec. 29, pg. 11; Ct. Rec. 35, pg. 2-3; Ct. Rec. 41, pg. 12.)

9 49. Any one may request that Fortinet review its classification of a
10 particular Web site or page by means of an electronic form available on the
11 Fortinet site. (Ct. Rec. 29, pg. 12.)

12 50. The FortiGate unit is an appliance that acts as an intermediary
13 between the browser on the user's computer and the servers with which the
14 browser communicates. (Ct. Rec. 41, pg. 13.)

15 51. A FortiGate unit has been installed at each of NCRL's 28 branches.
16 (Ct. Rec. 41, pg. 13.)

17 52. All Internet traffic to and from NCRL's public use computers is
18 routed through the FortiGate unit, which filters Web content in accordance with
19 information provided by the Fortinet Rating Server and settings established by
20 NCRL that define which categories and classifications of Web sites to block.
21 (Ct. Rec. 29, pg. 13-15; Ct. Rec. 41, pg. 13-15.)

22 53. If access to a Web site or page is denied, the computer user receives
23 a message to that effect. (Ct. Rec. 41, pg. 15.)
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1 54. If access to an embedded image is denied, the user receives no
2 message; instead, a blank image is substituted for the blocked image. (Ct. Rec.
3 41, pg. 15.)

4 **B. NCRL's Configuration of FortiGuard.**

5 55. The categories of Internet sites that NCRL's FortiGuard filter is
6 configured to block – along with category descriptions provided by Fortinet –
7 are listed below.
8

9	Hacking	Websites that depict illicit activities surrounding the unauthorized modification or access to programs, computers, equipment and websites.
10		
11	Proxy Avoidance	Websites that provide information or tools on how to bypass Internet access controls and browse the Web anonymously, includes anonymous proxy servers.
12		
13	Phishing	Counterfeit web pages that duplicate legitimate business webpages for the purpose of eliciting financial, personal or other private information from the users.
14		
15	Adult Materials	Mature content websites (18+ years and over) that feature or promote sexuality, strip clubs, sex shops, etc. excluding sex education, without the intent to sexually arouse.
16		
17	Gambling	Sites that cater to gambling activities such as betting, lotteries, casinos, including gaming information, instruction, and statistics.
18		
19	Nudity and Risque	Mature content websites (18+ years and over) that depict the human body in full or partial nudity without the intent to sexually arouse.
20		
21	Pornography	Mature content websites (18+ years and over) which present or display sexual acts with the intent to sexually arouse and excite.
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23		
24		
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1	Web Chat	Websites that promote Web chat services.
2	Instant	Websites that allow users to communicate in
3	Messaging	
4	Malware	Sites that are infected with destructive or
5		malicious software, specifically designed to
6		damage, disrupt, attack or manipulate computer
7		systems without the user’s consent, such as virus
8		or trojan horse.
9	Spyware	Sites that host software that is covertly
10		downloaded to a user’s machine, to collect
11		information and monitor user activity, including
12		spyware, adware, etc.

13 (Ct. Rec. 41, pg. 16-17.)

14 56. NCRL also blocks the Image Search, Video Search and Spam URL
15 classifications of Web sites, as well as certain specific sites, including
16 netvue.com and pixsy.com. (Ct. Rec. 41, pg. 17.) NCRL blocks certain pages
17 within websites, including: ask.com/images, ask.com/pictures,
18 search.live.com/images, images.google.com and images.search.yahoo.com
19 (image search engines); and craigslist.org/cgi-bin/personals.cgi (a personals
20 site). Id.

21 57. Since it implemented the FortiGuard filter, NCRL has blocked and
22 unblocked the YouTube, MySpace and Craigslist Web sites. Currently, NCRL
23 overrides its filter to allow access to those sites (excluding the personals section
24 of the Craigslist site). (Ct. Rec. 29, pg. 33; Ct. Rec. 41, pg. 17-18.)

25 **C. Accessibility of Blocked Internet Sites.**

26 58. If an NCRL patron wishes to access a Web site or Web page that is
blocked by FortiGuard, the patron may ask NCRL to manually override the

1 filter. (Ct. Rec. 29, pg. 17; Ct. Rec. 41, pg. 8-9.) NCRL has implemented a
2 process whereby if Internet content is blocked, a patron can immediately send an
3 e-mail to NCRL administrators for review. (Ct. Rec. 29, pg. 17).

4
5 59. When a request is submitted, the Web site or page at issue is
6 reviewed to determine whether allowing access to it would be consistent with
7 NCRL's mission, its Collection Development Policy and Internet Public Use
8 Policy, and the requirements of CIPA. (Ct. Rec. 29, pg. 17; Ct. Rec. 41, pg. 8;
9 Ct. Rec. 49, pg. 4, 8.) If the request is approved, access is allowed on all public
10 computers in all branches. (Ct. Rec. 41, pg. 8.) If NCRL deems the request to
11 be inconsistent with its mission, its Collection Development Policy, its Internet
12 Public Use Policy, or CIPA, the request will be denied. (Ct. Rec. 29, pg. 17; Ct.
13 Rec. 41, pg. 8; Ct. Rec. 49, pg. 4, 8.)

14
15 60. NCRL received 92 requests to unblock access to Web sites
16 (including 90 automated requests) between October 1, 2007 and February 20,
17 2008. (Ct. Rec. 57, pg. 7.) Of those 90 automated requests, NCRL responded to
18 25 requests more than 24 hours after they were received. Id. In five instances, it
19 took NCRL more than three days to respond. Id. Of the remaining 65
20 automated requests, NCRL responded to 29 requests the day after they were
21 received and responded to 27 requests the same day they were received, with
22 eight of those responses taking less than one hour. Id. There is no evidence in
23 the record that addresses NCRL's response, if any, to the remaining 11 requests.
24
25 Id.
26

1 61. NCRL has unblocked sites at the request of patrons on 12 occasions
2 since October 1, 2007. (Ct. Rec. 57, pg. 7.) Examples of sites unblocked at a
3 patron's request include: www.keyartpromotions.com, artbyjohndan.com
4 (described by the requestor as "non-offensive, mostly abstract art"),
5 www.pcthandbook.com (erroneously blocked as "Pornography"),
6 www.firstthings1st.com (described by the requestor as a nonprofit ministry but
7 erroneously blocked as "Gambling"), and www.ourfamily-web.com
8 (erroneously blocked as Malware). (Ct. Rec. 57, pg. 7-8.) FortiGuard also
9 blocked access to the Kalispel tribe's Web site under the "Gambling" category,
10 even though the site did not itself allow any online gambling. (Ct. Rec. 57-3,
11 pg. 210-13.) At the request of a patron who was researching employment
12 opportunities, NCRL unblocked access to the site while the patron remained in
13 the library. (Ct. Rec. 57-3, pg. 213.)

14
15
16 **D. The FortiGuard Filter's Error Rates.**

17 62. Like all Internet filters, the FortiGuard filter makes mistakes. (Ct.
18 Rec. 41, pg. 18.)

19
20 63. There have been some instances where patrons of NCRL have been
21 able to obtain pornographic, sexually explicit, child pornographic or obscene
22 materials online at NCRL branch libraries. (Ct. Rec. 29, pg. 23; Ct. Rec. 41,
23 pg. 18.)

24 64. The FortiGuard filter also overblocks – meaning that it erroneously
25 blocks Web sites that should not be blocked. (Ct. Rec. 41, pg. 18-19.)
26

1 65. Plaintiffs' expert Bennett Haselton tested the accuracy of the
2 FortiGuard filter, describing the methodology and results of his study in an
3 expert report. (Ct. Rec. 41, pg. 19.)

4 66. Mr. Haselton determined that of 100,000 randomly-selected .com
5 domains, FortiGuard blocked 536 "real" Web pages as Pornography or Adult
6 Materials, and that of those blocked sites 64 were blocked in error, for an error
7 rate of 11.9%. (Ct. Rec. 41, pg. 19.)

8 67. Mr. Haselton determined that of 100,000 randomly-selected .org
9 domains, FortiGuard blocked 207 "real" Web pages as Pornography or Adult
10 Materials, and that of those blocked sites 49 were blocked in error, for an error
11 rate of 23.6%. (Ct. Rec. 41, pg. 19.)

12 68. NCRL's expert, Paul Resnick, conducted his own study based on
13 the URLs that were actually visited or requested at NCRL branch libraries
14 during the week of August 23-29, 2007. (Ct. Rec. 29, pg. 28; Ct. Rec. 57,
15 pg. 17.) Dr. Resnick determined that approximately 60,000 URLs had been
16 visited or requested during that week. (Ct. Rec. 29, pg. 29.)

17 69. Dr. Resnick found that of the 60,000 URLs that were visited or
18 requested during the week of August 23-29, 2007, 2,180 URLs were blocked by
19 the FortiGuard filter under NCRL's filtering policy; and that of those 2,180
20 URLs:

- 21 • 289 complete Web pages were blocked, with 20 of those
22 blocked in error;

- 1 • 1,406 “helper images” (that is, “little images that are parts of
- 2 web pages”) were blocked, with 744 of those blocked in error;
- 3 • 194 “other images” were blocked, with 24 of those blocked in
- 4 error; and
- 5 • 110 URLs were not “ratable” – meaning that Dr. Resnick could
- 6 not determine whether they had been correctly blocked.

6 (Ct. Rec. 57, pg. 17-19; Ct. Rec. 62, pg. 17-18.)

7 **IV. FILTERING ALTERNATIVES.**

8 70. NCRL installed privacy screens on terminals in its Wenatchee

9 branch when Internet access was first provided in approximately 1999, but

10 removed the screens shortly thereafter. (Ct. Rec. 41, pg. 20; Ct. Rec. 49, pg. 16.)

11 Since then NCRL has not installed privacy screens on any of its computers. Id.

12

13 71. NCRL has not purchased recessed desks. (Ct. Rec. 41, pg. 21; Ct.

14 Rec. 49, pg. 17.)

15

16 72. NCRL has decided not to substitute a tap-and-tell policy for its

17 current Internet filtering policy, and has not hired security guards for its

18 branches. (Ct. Rec. 41, pg. 21; Ct. Rec. 49, pg. 17.)

19 73. NCRL has not considered any other alternatives to full-time

20 Internet filtering. (Ct. Rec. 41, pg. 21.)

21 74. NCRL patrons are not permitted to view Internet pornography in

22 NCRL branch libraries. (Ct. Rec. 49, pg. 16.) NCRL expects branch librarians

23 to monitor and respond to complaints of inappropriate use of public use

24 computers. (Ct. Rec. 29, pg. 23.)

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1
2 DATED this 24th day of March, 2008.

3 AMERICAN CIVIL LIBERTIES
4 UNION OF WASHINGTON
5 FOUNDATION

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CERTIFICATE OF SERVICE

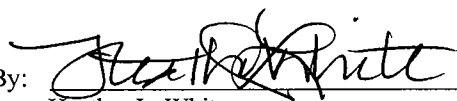
I hereby certify that on March 24, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

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