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November 3, 2008
LS 501 – Assignment 4

**Exploring *Mainstream Loudoun v. Loudoun County Libraries*:
Researching the case, its impact, and ways to avoid similar suits.**

The emergence of the internet brought about an information explosion that in turn brought about new problems and challenges. The internet is not edited or monitored and anyone can create a site containing any material they wish to put forward. Most people would agree that much of that material, including pornography, is inappropriate for children. In an attempt to protect children from such material, internet filters were developed that would limit the materials accessible from the internet on a particular computer or network. Unfortunately, internet filtering software is imperfect. It often blocks legitimate, appropriate websites while failing to block much of the material the software is designed to block.

When internet filters began to be applied in American public libraries, many civil liberties proponents argued that the action violated the library users' right to free speech. The American Library Association also criticized filtering, stating that the decision of the appropriateness of internet content lay with library internet users and not with librarians. Unfortunately, political pressures in individual communities pushed libraries to ignore the ALA recommendation and consider filtering. Loudoun County public library was one such institution.

Case Summary

The board of trustees of the Loudoun library created an "internet sexual harassment"¹ policy early in 1997. It was designed to protect minors from accessing online material that is sexually explicit or otherwise considered "Harmful to Juveniles" as defined by Virginia law. The policy required its six branch libraries to employ internet filtering software on all public access terminals at all times.² It wasn't long before people became upset by the filter's side-effect of blocking legitimate websites.

In December that same year, several patrons belonging to the community organization called Mainstream Loudoun filed suit against the library in order to have the filters removed because they violated their right to free speech access. The library responded with the assertion that filtering was an extension of their interlibrary loan and collection development policy which stated that the library would not purchase or

otherwise obtain objectionable materials when requested by a patron.³ Blocking a site, they argued, was like choosing not to add an item to the library collection. It was not an act of removing library material that was already obtained. The plaintiff saw the internet as a single entity, much like a set of encyclopedias, and the library's decision to provide it was all or none.⁴

The judge ultimately disagreed with the library's argument and ruled in favor of the plaintiff. Judge Leonie Brinkema concluded that "First Amendment freedoms fully apply to library Internet access."⁵ Loudoun library's internet filter policy violated free speech rights on several fronts. The defendant was unable to demonstrate that there was any real and present problem with the viewing of inappropriate materials creating a hostile environment in the library;⁶ the policy "limits adult Internet speech to what is fit for children"⁷; the library did not try to use less restrictive alternatives to filters for achieving their goal of protecting minors; and it removed access to material that is available on the internet.⁸ The library decided not to appeal the decision.

Case Impact

The legal legacy of *Mainstream Loudoun v. Loudoun County Library* is that it was the first case to challenge the use of internet filters in a public library.⁹ It clarified the library's role as a public forum, refuted the idea that filters were a collection development issue rather than a censorship issue, and affirmed that libraries were fully responsible for upholding First Amendment rights in regard to the internet.¹⁰ Many of the basic principles put forth in its decision are still a matter of great debate in the library community and, because the ruling was not on the Supreme Court level, still subject to court battles. The two most important subsequent cases that relate to *Mainstream Loudoun* address the Children's Internet Protection Act (CIPA) – *ALA v. U.S.* and *U.S. v. ALA*.

In the 2002 case of *ALA v. U.S.*, the court agreed with the *Mainstream Loudoun* decision that a public library is a designated public forum and as such it was subject to strict scrutiny in regard to the First Amendment.¹¹ It found CIPA unconstitutional saying that limiting access to free speech was an unacceptable method of addressing inappropriate behavior.¹² Other, less severe methods were deemed sufficient in reaching the goals set forth by the case – that is, protecting minors from age-inappropriate harmful content.

Unfortunately, this decision was reversed by the Supreme Court in 2003 with *U.S. v. ALA*. Though the Justices in the case did not issue a united opinion and there was strong dissent, the majority assessment was that public libraries were not a designated public forum, that internet filtering is a collection development issue rather than a censorship issue, and that the applicable scrutiny was high but not strict. The law was found constitutional as long as the filters are removed under certain circumstances (see following section).¹³ There is a real possibility that the law will be challenged again in the future. *U.S. v. ALA* ultimately reversed much of the headway gained in the *Mainstream Loudoun* case and reinforced by *ALA v. U.S.*

The Case in Library Literature

There are relatively few explicit mentions of this case in library literature. Around the time the case was making headlines (1998-1999), various announcements about it were published in library publications such as *Library Journal* and *Newsletter on Intellectual Freedom*.¹⁴ Other mentions of the case appear in later articles that present a timeline of the progress of the filters in library debate.¹⁵ Usually the goal of these articles is to provide the reader background information or perspective on the more recent CIPA cases (*ALA v. U.S.* or *U.S. v. ALA*, depending on when published). Since the pass of these two CIPA cases, all focus is on their results and the ramifications of the latter ruling. Though the *Mainstream Loudoun* case may not be explicitly mentioned or may only be mentioned in passing,¹⁶ there is a much broader range of literature that discusses the filtering debate in general. The extent to which knowledge of the case influenced the thoughts and arguments of the writers is debatable but it may be presumed that at least some articles were influenced in some way by the case, especially those published between 1999 and 2002.

Moving outside of library literature, law journals have published a number of articles having a lot to say about the *Mainstream Loudoun* case, examining the judicial process, analyzing the results, and discussing the ramifications for future cases. These articles necessarily approach the issue from a legal perspective and often focus on the legal impact of the case. It is not uncommon for them to discuss at length topics such as immunity and public forum types.¹⁷ Though most useful for lawyers and others closely concerned with the legal aspects of the case, some legal articles do contribute valuable and practical information for the librarian.¹⁸

Avoiding this Type of Case

The most obvious way to avoid this lawsuit seems to have been Loudoun County Library refraining from installing internet filters in the first place. However, this solution is not foolproof because a library can just as easily be sued for failing to utilize filters, as is the case with *Kathleen R. v. City of Livermore*.¹⁹ However, taking other, less severe actions before moving on to filtering would have improved the Loudoun library's case.²⁰

If filters must be used, there are some strategies that can be implemented that reduce the violation of Free Speech access. Prior to filing the lawsuit, the Mainstream Loudoun organization had offered a compromise version of the policy that allowed adults to request filters turned off for themselves or their children.²¹ Considering and adopting that suggested policy would have prevented the lawsuit, not only because it would have appeased the plaintiffs but also because allowing case-by-case filter removal reduces the risk of violating Free Speech access. Similarly, promptly acting on minors' requests to un-block legitimate sites would have helped preserve patron rights. Going a step further, systematically and permanently adding legitimate sites to a "safe site" list as soon as it is discovered that they are blocked by the software may have had an effect. Lastly, lessening the filter restrictions may have prevented some of the legitimate websites from being blocked and reduced the likelihood of blocked site owners participating in the lawsuit.²²

Libraries can implement any or all of the strategies suggested for preventing the Loudoun case, but some are particularly important. Because of the subsequent ruling of *U.S. v. ALA* regarding the constitutionality of CIPA,²³ it is crucial that a library choosing to employ filters protect First Amendment rights. This should be achieved by using the least amount of restriction possible, promptly lifting filters when requested by adults, and promptly allowing access to individual sites when requested by children. Failing to do so makes a library vulnerable to an "as-applied" lawsuit.²⁴

The official stance of the ALA regarding internet filtering is that filters should not be used unless mandated by local laws and that the user should be left to determine the quality, importance, and appropriateness of the material he or she finds online. Similar to common sense conclusions and the CIPA ruling, the ALA recommends that if a library must use filters or similar technologies that "blocks access to information,

it should be set at the least restrictive level in order to minimize the blocking of constitutionally protected speech.”²⁵ The filters must be removed when requested by adults when they block access to “constitutionally protected information.” Children must be allowed to request that a site be unblocked if its content is such that it should not have been blocked in the first place. Only a parent or guardian should restrict the internet content accessed by their child. It is not the role of the library as doing so violates the First Amendment rights of the child. Following these suggested guidelines may help libraries avoid filter-related free speech violation lawsuits.

Regardless of whether a library decides to filter, the methods they decide to do so, or the level of filtering they decide to implement, it is essential that libraries remember their role in our free society to provide open access to all citizens, including those who may not have access to that information anywhere else. They must ask, how can we protect children without violating patron rights? Programs educating patrons on methods for selecting the most reliable materials would help patrons make content decisions on their own. Internet safety classes for youth and their parents would help children be aware of and protect themselves from the potential dangers. Clearly communicating the process for lifting filters or unblocking sites and making the process quick and anonymous would empower users to exercise their rights. Signage outlining what filters do and their limitations would also be helpful. If a library can show a history of policy and action that reflects their commitment to protecting user rights, they will have a better stand if they find themselves subject to a lawsuit.

Lessons Learned in Research Process

The process of researching this case provided an education in humility for this researcher. Having grown up in libraries and having worked in them since my early teenage years, I have never found libraries or research within them to be intimidating. I can walk into virtually any public or academic library and leave with the information or materials I came for, largely or exclusively without guidance. However, using a law library was an entirely new experience for me. I did not know where the library was, where to park once there, or how to get in. I did not know who to ask for help. I did not know how to decipher my citation, how to find the volume containing my case, nor did I know how to navigate its contents. I did not know how to use the citations database. I did not know what many of the words meant in the documents. All I knew was that the answer to my

information need was in the law library somewhere. It allowed me to relate to someone who might be using my particular library, an academic library, or any library for the first time.

My visit to the Alaska State Law Library in downtown Anchorage began with a pass through a security checkpoint reminiscent of airport security complete with x-ray scanning of my bags and a pass through a metal detector. The security guards then pointed me in the direction of the law library which had poor signage. Upon entering, I was very confused about where to go for assistance. I saw neither a help desk, nor any people at all when I walked in. I had to come in about ten feet and really look around to me to discover what appeared to be a circulation or reference desk tucked away in the corner behind a wall (see Appendix A). Only on my way out hours later did I see the small 'REFERENCE' sign, no larger than 12" by 3", sitting on the 10-foot long counter.

Behind this counter, I found a lone woman with ear bud headphones using a computer in the far corner. I felt bad having to interrupt her work but I offered a greeting, which brought the woman up to the counter. I identified myself as a library school student needing to see this case and track its use in other cases using Shepard's Citations. She did not seem particularly interested or receptive but asked me for my citation nonetheless. Though the citation was a meaningless combination of abbreviations and numbers to me, the woman seemed to know immediately what it meant.

I was led unceremoniously to the stacks and shown where volume 24 of the Federal Supplement 2d was shelved. The woman said I would find the case on page 552, according to my citation. She then led me to the computer terminals and said they no longer kept paper copies of Shepard's and that I would need to use Westlaw on the computers to track the case. She sat me down and said to type in my citation. When the system located my case, she went through the resulting screen very briefly, explaining where to read the documents of the case and how to look through the citations. I was shown a booklet identifying what various symbols, such as yellow flags, meant. With that, I was left to my research. I did not really feel that all of my questions were answered but I did not want to bother the woman any more. I decided to figure the rest out on my own, and I was able to using the assistance she had given to me.

The entire experience put first-time library use into perspective for me. It also showed me the importance of making the library an inviting and welcoming place. From the entrance, it must be immediately clear where one can go for help. Ideally, the desk itself will be located right there, but if prohibited by building design, there should at least be clear and obvious signage. Individuals working the help desk (whether it be a reference desk or a circulation desk providing triage) should sit near the counter, making eye contact with those who come in. When I work at my library's circulation desk, I always ask people who hesitate or stall at the desk even slightly whether they would like some help. I never knew just how important this initial invitation is! This experience showed me how it felt to ask a dumb question, one that you know the librarian has heard a million times. I have heard that it is important to answer every question as if it were the first time you were asked. This experience cemented that in my mind. Lastly, I realized that the bibliographic tools my library utilizes are not as simple for the novice user as they are to me. LC classification seems intuitive to me but truly it is not. I never thought it took much effort to decipher any citation and search for an article or book based on the information gleaned. I now realize that these things may not be obvious to a new user. My vast experience with them has caused me to lose touch with what it feels like to not know.

Endnotes

¹ The policy was based on the idea that the viewing of pornography in library would create a sexually hostile environment for patrons and staff, which might prevent them from accessing library materials. It also stated that since the library has long held the policy that it does not obtain pornographic materials in a traditional format, it would not obtain them via the internet (Loudoun County Public Library, *Policy on internet sexual harassment*).

² The library edition of X-Stop was selected to fulfill the policy's requirements.

³ *Mainstream Loudoun, et al. v. Board of Trustees of the Loudoun County Library*, 783.

⁴ Rosales, 365. Also Elsner, 219.

⁵ *Mainstream Loudoun*, 1. *Mainstream Loudoun, et al. v. Board of Trustees of the Loudoun County Library* uses the phrase "strict scrutiny" for this concept. Also Law Library - American Law and Legal Information, 1. Also Rosales, 366. Also Elsner, 219.

⁶ *Mainstream Loudoun, et al. v. Board of Trustees of the Loudoun County Library*. Also Elsner, 219.

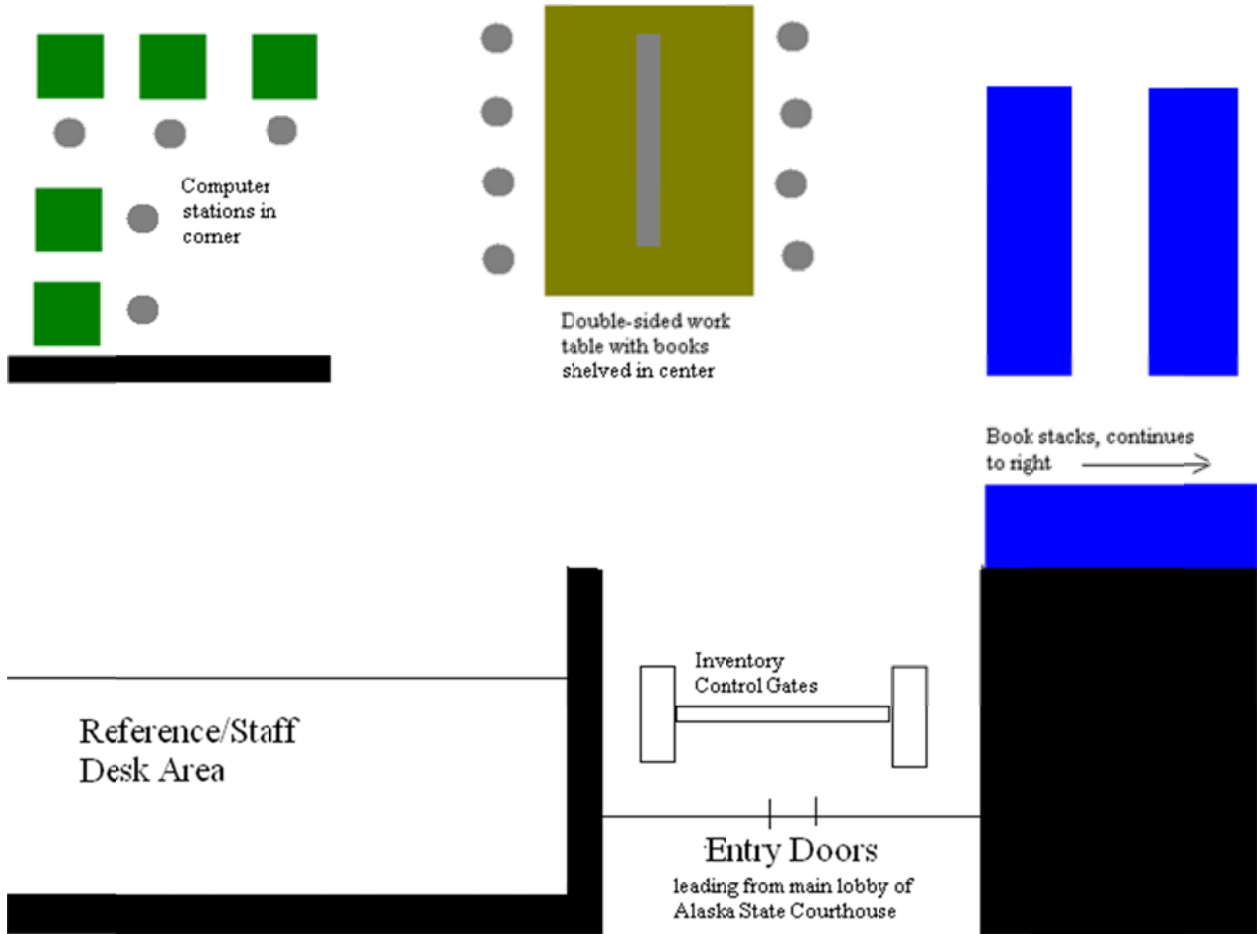
⁷ *Mainstream Loudoun, et al. v. Board of Trustees of the Loudoun County Library*.

⁸ *Mainstream Loudoun, et al. v. Board of Trustees of the Loudoun County Library*. Also Rosales, 367-368.

⁹ Carney, 1. Also Rosales, 358. Also Law Library - American Law and Legal Information, 1.

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- ¹⁰ Rosales said that the ruling “is significant because ... she held that a public library must satisfy *strict scrutiny* before engaging in content-based regulation of protected speech” (p. 366).
- ¹¹ “Where the state designates a forum for expressive activity and opens the forum for speech by the public at large on a wide range of topics, strict scrutiny applies to restrictions that single out for exclusion from the forum particular speech whose content is disfavored.” *ALA v. U.S.* (2002), quoted in Corn-Revere, 110.
- ¹² Corn-Revere, 111. Note: Corn-Revere was the chief lawyer for the plaintiff in *Mainstream Loudoun*.
- ¹³ Corn-Revere, 112-113.
- ¹⁴ Some examples: Ferguson, Goldberg, Oder, “Loudoun board declines to appeal,” and numerous others not cited.
- ¹⁵ An excellent example of this is Sobel. Schuyler takes a slightly different approach and uses the Loudoun case as a springboard to discuss what comes next in the filtering debate.
- ¹⁶ Schmidt is a good example of an article mentioning the Loudoun case only in passing.
- ¹⁷ It should be noted this case’s impact went beyond libraries and censorship. Numerous cases cited the *Mainstream Loudoun* decision in regard to injunctive relief, immunity, and the definition of a limited public forum. Among these cases are *Smith v. Intercosmos Media Group*, *Doe v. Franco Production*, and *Ramos v. Cabajal*.
- ¹⁸ The Rosales article is an example of one that can be useful to the library practitioner. In addition to a full legal analysis, it also talks in layman’s terms about how to void similar suits, among other things.
- ¹⁹ In this case, the parent of a minor library user sued to compel the library to install internet filtering technology. The case was dismissed by the trial court in 1996 and again by the California Court of Appeal in 2001.
- ²⁰ Rosales, 367. Also *Mainstream Loudoun, et al. v. Board of Trustees of the Loudoun County Library*. Also *Law Library - American Law and Legal Information*, 1.
- ²¹ “In an effort to avoid a lawsuit, we sent the board a formal letter on September 3, 1997, outlining the constitutional problems with their policy... *Mainstream Loudoun* also proposed a compromise policy in an effort to stave off a lawsuit. Our suggested policy -- now in use after a legal struggle of close to two years -- gave library patrons the option of choosing filtered or unfiltered access for themselves and their children. The library board ignored all our attempts to resolve this issue outside court.” *Mainstream Loudoun*, 1.
- ²² The Censorware Project calls the Loudoun library’s filtering policy “the nation’s most restrictive.” *Mainstream Loudoun’s* website describes the policy as “overly restrictive.”
- ²³ See *United States v. American Library Association*. Also Corn-Revere, 109.
- ²⁴ “As-applied” here means that rather than a lawsuit that challenges the CIPA law, the individual library is sued because of the way they applied the law and managed filters. Minow (2004), 1. Also Corn-Revere, 106 & 115.
- ²⁵ ALA, *Access to Electronic Information, Services, and Networks*.

Appendix A: Law library entry layout



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