House
Legislative
Analysis
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RESTRICT INTERNET ACCESS

House Bill 4191 as enrolled
Public Act 37 of 1999
Second Analysis (6-11-99)

Sponsor: Rep. Nancy Cassis
House Committee: Local Government and Urban Affairs
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Young readers visit libraries to collect information from a variety of sources, often to complete school assignments. Among the many research tools available at the library is the Internet. Although the Internet provides access to a host of web sites that are educational, it also allows young people unlimited access to web sites that contain pornography and obscenity.

Libraries seldom deny Internet access, citing the need to guarantee free speech under the First Amendment of the U.S. Constitution. However, constitutional law recognizes different kinds of speech, and court opinions have been issued to place limits on certain forms of expression. As a result, limits to Internet access often are a matter of library policy. For example, a computer can be equipped with various levels of restriction, called filtering software, in order to prevent minors from viewing images and texts that could cause them psychological and emotional harm. And often, library patrons are asked to sign written 'use policies', agreeing to follow library rules which prohibit using computing resources to display obscene materials.

Many schools and some libraries use filtering software. In order to encourage more libraries to use filtering software, some have argued that a law is needed to alert local library boards to the fact that certain kinds of limits on speech are lawful, and in particular that access to Internet pornography can be limited, in order to protect young readers.

THE CONTENT OF THE BILL:

House Bill 4191 would amend the Library Privacy Act to allow the governing board of a library that offers Internet access services to the public to restrict access to minors. The bill would take effect August 1, 1999.

Under the bill, a library could restrict use of the Internet, or a computer, computer program, computer network, or computer system to the public, by providing services in the following manner: a) by making available to people of any age computer terminals that are restricted from receiving obscene matter or sexually explicit matter that is harmful to minors; or, b) by reserving to people 18 years of age or older, or to people under 18 who are accompanied by a parent or guardian, one or more terminals that are not restricted from receiving any material.

House Bill 4191 also would define the terms: computer; computer network; computer program; computer system; device; harmful to minors; Internet; minor; obscene; sexually explicit matter; and terminal. Specifically, the bill would define "computer" to mean any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program, and that can store, retrieve, alter, or communicate the results of the operations, to a person, computer program, computer, computer system, or computer network.

Under the bill, "device" would include, but not be limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

The bill would define "harmful to minors" and "sexually explicit material" to mean those terms as they are defined in Public Act 33 of 1978, sections four and three, respectively (MCL 722.674 and 722.673). There,"harmful to minors" is defined to mean sexually explicit matter which meets all of the

following criteria: considered as a whole, it appeals to the prurient interest of minors as determined by contemporary local community standards; it is patently offensive to contemporary local community standards of adults as to what is suitable for minors; and, considered as a whole, it lacks serious literary, artistic, political, educational, and scientific value for minors. The act defines "sexually explicit material" to mean sexually explicit visual material, sexually explicit verbal material, or sexually explicit performance.

Further, the bill would define "obscene" to mean that term as it is defined in Public Act 343 of 1984, section 2 (MCL 752.362). There, "obscene" is defined to mean any material that meets all of the following criteria: the average individual, applying contemporary community standards, would find the material taken as a whole, appeals to the prurient interest; the reasonable person would find the material, taken as a whole, lacks serious literary, artistic, political, or scientific value; and, the material depicts or describes sexual conduct in a patently offensive way.

MCL 397.602

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the bill would have no fiscal impact on state government, but could have an impact on local units. The decision to make available Internet access computer terminals that are restricted from receiving obscene or pornographic material would be that of the local libraries' governing bodies. Depending on the Internet service already in place, costs could occur as a result of the need to purchase the filter software or to subscribe to the filter for a fee. (3-2-99)

ARGUMENTS:

For:

Like alcohol and drugs, pornography destroys lives. In order to protect children from pornographic or obscene images, texts, and virtual conversations--the kinds of experience that can unnecessarily trouble and could traumatize young lives--public libraries should be encouraged to restrict young readers' access to certain Internet web sites. This legislation allows that kind of restriction, but leaves to the discretion of the local library board how and what would be blocked. This bill meets four tests, each important to ensure its constitutionality and effectiveness: First, the bill acknowledges that there is a compelling state interest in protecting minor children; second, the bill is drafted narrowly to prevent access to pornographic and obscene websites only by minors (unless they are accompanied by an adult); third, the bill is permissive and not mandatory so that decisions to limit access are voluntary; and fourth, the bill ensures that local control is maintained, vesting the decision to limit access in the local library.

Response:

Libraries in Michigan can already restrict access to pornographic sites by their patrons who are minors. Indeed, the Michigan Library Association has distributed a sample policy document to its members, in order to help library boards restrict access in ways that are constitutional, and many have done so.

For:

It is difficult to overstate the devastating power of pornography when it is foisted or forced on young or tender minds. In order to prevent sexual predation, it is imperative that adults who value moral excellence as comprising virtue, goodness, morality, rectitude, and righteousness, work to support and model a public policy of caring and compassion; to ensure safety and prevent unnecessary harm; and to insist upon decency in our public squares, the public places where citizens young and old gather together, throughout our communities.

Against:

The *Detroit Free Press*, in an editorial dated 2-3-99, says that finding a way to shield kids from Internet smut is likely going to fall to parents and businesses, as it should. Any attempt to regulate it would infringe on free speech, and the fast evolution of the technology means any laws would become quickly outdated. The editorial notes that a U.S. district judge who recently blocked enforcement of the federal Child Online Protection Act, designed to keep pornography away from minors using the Internet, said he hated to delay anything that protects kids, but added, "Perhaps we do the minors of this country harm if First Amendment protections, which they will with age inherit fully, are chipped away in the name of their protection."

Against:

According to a report in the May 1999 issue of *Government Technology*, there was a landmark ruling concerning filtering software issued in November 1998, when U.S. District Judge Leonie Brinkema of Virginia ruled Loudoun County's highly restrictive Internet policy unconstitutional. According to the

judge's decision, the library's policy violated the First Amendment, failed to serve a compelling government interest, was too broadly applied, and had inadequate procedures to ensure judicial review. The judge ruled that although a library is under no obligation to provide Internet access to its patrons, if it has chosen to do so, it must comply with the First Amendment. According to the report, the American Civil Liberties Union expects the Loudoun County ruling to trigger more lawsuits. To prevent suits, a number of libraries have taken heed of the decision. Library systems in Hillsborough County, Florida, and Hennepin County, Minnesota, for example, have dropped plans to install filters according to a report in the *Library Journal News*.

Response:

Judge Brinkema's ruling is only legally binding on public libraries in the U.S. District of Eastern Virginia and does not set a national precedent. So far, Loudoun County is the only library system mandated by a court to drop its filtering policy. According to the American Library Association, 60 percent of the country's public libraries offer Internet access directly to the public, up from 28 percent in 1996. About 15 percent of libraries with Internet access have installed filters. Some of the leading products include SurfWatch from Spyglass, Inc., Cybersitter from Solid Oak Software, Cyber Sentinel from Security Software Systems, and Cyber Patrol from The Learning Company.

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.