

10-4-2011

Internet Filtering in the Public Library: The Case of London Ontario

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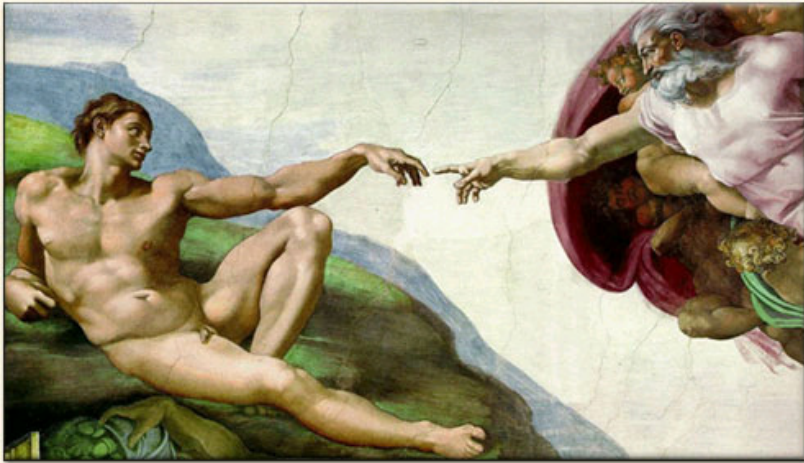
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Citation of this paper:

Trosow, Samuel E., "Internet Filtering in the Public Library: The Case of London Ontario" (2011). *FIMS Presentations*. 12.
<https://ir.lib.uwo.ca/fimspres/12>

Internet Filtering in the Public Library: *the case of London Ontario*



Presentation for LIS 9001 - - October 4, 2011

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Internet Policy Project Plan

At its May 2007 meeting, the [London Public Library Board](#) voted to adopt the Internet Policy Review Project (IPPP). The [staff report](#) (which was given to the Board at the meeting as an added item) discussed the purpose of the project . . .

Purpose of the Project

The purpose of this project is to review the balance of filtered and unfiltered computers in the Library to determine an appropriate balance of filtered and non-filtered machines. Key factors we will study are:

- an individual's experience in the library in terms of unintentional exposure to visual images not appropriate in a general public setting;
 - the steps the Library can undertake in order to mitigate risk of exposure to such images for its customers and itself;
 - a customer or employee's ability to use the Internet as an effective research tool;
 - the Library's ability to provide a broad spectrum of information reflecting all sides of an issue, as consistent with our collections management policy.
-

Internet Policy Project Plan

The [Report](#) explained the basis of the “problem” the project would be addressing. . .

Customers must “click” an ‘I agree’ statement to abide by LPL rules of use. On an unfiltered machine, customers can access any Internet site they choose. From time to time, customers may access images which are not appropriate as part of a public environment that is supposed to be inviting and safe for all. Images on the computer screen become part of the Library environment for all customers and those images that are sexually explicit or extremely violent may be unintentionally viewed by members of the general public (i.e. as people are walking behind a computer).

We have received negative comments on an infrequent but regular basis from customers at Central and at Branch locations about these types of incidences. Our mission statement and value promise assures customers that we will provide a welcoming environment for all people, such as families and children, and pays attention to the individual’s experience in the Library.

Internet Policy Project Plan

The [Report](#) describes the desired situation . . .

Brief Description of Desired Situation

LPL is striving for an environment in all locations that is as inviting and welcoming as possible, where everyone can feel comfortable. We also want to make sure that we do not restrict access to information that is valuable for our customers, including information on both sides of controversial issues that may not be of a popular viewpoint or opinion. We want our staff to be well trained so they can deal with customer's concerns. LPL wants to be an active player in finding constructive solutions to this issue being debated in the broader library community. The library will continue its educative focus for parents and children regarding Internet safety and will continue to use such hardware as will reduce the impact of visual images in the library environment.

Internet Filtering
Project
Feedback Forum



Internet Policy Project Plan

. . . as well as setting forth the deliverables for the project:.

Deliverables:

- For this study period, June – October, 2007, public computers will be filtered in the Library system, with the exception of designated computers.
- Internet awareness training related to chat rooms, emails, etc. for the public.
- Mechanism to expand filtering to wireless environment.
- Feedback mechanism for the public and staff.
- Report to the Board including any revisions to policy that reflects our findings and a recommended balance of filtered and non-filtered machines.
- Report to the wider library community.

By the time of the June Board meeting, however, a number of questions had been raised by members of the public, including a representations from the FIMS community as well as from the [Chair of the CLA Intellectual Freedom Working Group](#).

At the June Board meeting, delegations were heard from [Samuel Trosow](#) and [Roma Harris](#), and a number of other letters had been sent to the Board objecting to the project on various grounds including intellectual freedom and access to information concerns.

Internet Policy Project Plan

At the June meeting a Board member moved to rescind the May approval, but was ruled out of order by the Chair. The matter was put over to the September LPL meeting

In what was apparently a response to the concerns raised by members of the public, the LPL posted an explanation of the program and a notice of an upcoming public forum on their website

Internet Policy Project Plan

The LPL webpage included the following statement, the gist of which had been repeated on a number of occasions:

*This project is **not about restricting intellectual freedom**. It is about reducing the risk of **unintentional exposure of customers to images**, on computer screens in the library, that are not appropriate in a public space, specifically images that are violent or sexually explicit in nature, without compromising access to information such as consumer health or sexual education resources. It is very important to the Library that we provide a welcoming space and **positive experience for our customers**, while ensuring they have access to the information they need.*

What was the evidence to support the decision to filter?

The ensuing debate focused on restricting intellectual freedom.

Content filters had been placed on public terminals in the adult sections of the library. The opponents to filtering argued that intellectual freedom was certainly being constrained and that it was disingenuous to suggest otherwise.

The real question was whether or not the “**restrictions**” (or “**protections**” depending on your viewpoint) **were reasonable and warranted based on the situation.**

What was the evidence upon which the decision to filter was based?

So goes the logic of those who would liquidate intellectual freedom and replace it with questions of customer service.

What was the evidence to support the decision to filter?

The Staff Report circulated at the May 2007 meeting was short on specifics in terms of why filtering was needed:

We have received negative comments on an infrequent but regular basis from customers at Central and at Branch locations about these types of incidences. Our mission statement and value promise assures customers that we will provide a welcoming environment for all people, such as families and children, and pays attention to the individual's experience in the Library.

But it was about restricting intellectual freedom

As we see from a review of the Canadian case-law, courts have been more open and realistic when grappling with these difficult issues.

When faced with restrictions on expression in cases involving obscenity, hate-speech and even child pornography, the courts begin by even these forms of expression are protected under section 2b of the Charter. They then proceed with the analysis of whether such restrictions can be justified by reasonable measures **“prescribed by law as can be demonstrably justified in a free and democratic society.”** In other words, it might be excusable to limit intellectual freedom (expression rights in the words of the charter). But only if certain conditions are met.

The question should not be framed in terms of satisfying the most customers. The question was how to engage in a serious balancing of conflicting values.

Very different questions ... Perhaps with very different results

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Very different questions ... Perhaps with very different results

The Netsweeper Classification System

LPL initially said it was going to block:

9 – Extreme

and

23- Pornography

(the blocking of 9-extreme was subsequently discontinued)

Category List

1	Journals and Blogs	Primary	47	Redirector Page	System
2	Arts & Culture	Primary	53	Web Email	Primary
4	Criminal Skills	Primary	54	Web Chat	Primary
5	Occult	Primary	100	Invalid Serial	Internal
6	Match Making	Primary	101	Unauthorized Access	Internal
7	Substance Abuse	Primary	102	WebAdmin Access	internal
8	Entertainment	Primary	103	Override Filtering	Internal
9	Extreme	Primary	104	Local List	Internal
10	Gambling	Primary	105	Global List	Internal
11	Games	Primary	106	Unknown Category	Internal
12	General News	Primary	150	File Sharing	System
13	Hate Speech	Primary	151	Instant Messaging	System
14	Humour	Primary	152	Email	System
15	Investing	Primary	153	Voice Over IP	System
16	Job Search	Primary	154	Misc Protocols	System
17	Adware	System	155	Streaming Media	System
19	Sales	Primary	160	Alcohol	System
20	Political	Primary	166	Weapons	System
22	Self Help	Primary	170	Profanity	System
23	Pornography	Primary	203	Intranet Server	System
24	Sports	Primary	244	Host is an IP	System
25	Travel	Primary	245	Safe Search	System
26	Religion	Primary	246	Network Timeout	System
27	Sex Education	Primary	247	Malformed URL	System
28	Search Engine	Primary	248	No Text	System
31	Technology	Primary	249	Directory	System
32	Proxy Anonymizer	System	250	Search Keywords	System
37	Portals	Primary	252	Network Unavailable	System
40	Under Construction	System	253	Images	System
41	Alternative Lifestyles	Primary	254	New URL	System
45	General	System			

Extreme - 9

Extreme web sites contain things that are far from the norm. These URLs are categorized as such for their degree of intensity. The pages are usually violent or disturbing and are often related to pornography, bodily functions, obscenity, or perverse activities.

This category does not include widely accepted "extreme" activities, such as extreme rock climbing, skiing, or other achievements.

Examples:

Rate my Poo - <http://www.ratemypoo.com/ratemy/poo>

Ogrish - <http://www.ogrish.com/>

BDSM - <http://www.bdsm-list.com/>

Faces of Death - <http://facesofdeath.com/>

Sick, Gory Pictures - <http://www.horrorheads.net/>

Key Words

Bondage, BDSM, Spanking, Torture, Bizzare Sex, Bizzare Insertions, Violent Sex, Rape, Forced Sex, Sick Insertions, Ripped Apart, Scat, Fetish, Peeing, Squirting, Fisting, Strange Insertions, Can Insertion, Femdom, Domination, Latex, Watersports, Torture, Smothering, Fantasies, Fantasy, Fist Bang, Raw Sex, Gang Rape, Scat Babes, Scat Lovers, Shit Freaks, Pee Lovers, Sadism, Snuff, Undernet Sex, Fetish Bizzare, Forbidden Sex, Slave, Pain Sex, Bestiality, Zoo Sex, Farm Sex, Sex with Animals, Violent Deflorations, Wild Rape, Masochism, Bondage Pics, Bondage Movies, Cruel Bondage, Cruel Torture, Mistress, Incest, Bizzare Sex

Pornography - 23

This category contains URLs that reference, discuss, or show pornography, pictures, videos, or sexually oriented material. This category includes nudity, soft and hard-core pornography, sadomasochism, bestiality, child porn, fetishes, stories, adult magazines, toys, or any sexual related purchase.

This category excludes sex education sites.

Examples:

Playboy – <http://www.playboy.com>

Hustler – <http://www.hustler.com>

Free Porn Pictures and Movies - <http://www.pichunter.com/>

Adult Directory - <http://www.sex.com/>

Free Porn Finder - <http://www.1freepornfinder.com/>

Key Words

Sex, Porn, Pornography, Adult, Gay Sex, Free Gay Sex, Sex Video, Gay Porn, Gay Bear, Porn Star, Asian Sex, Latina Sex, Sex Pic, Porn Pic, Adult Sex, Adult Sex Directory, Classic Sex, Erotic, Manga Sex, Hentai Sex, Erotic Comics, Live Sex, Asian Sex, Ebony Sex, Transsexual Sex, Blow Jobs, Hand Jobs, Anal Sex, Amateur, xxx, Escorts, Adult Entertainers, Strippers, Phone Sex, Sex Contacts, Fetish, Bondage, Lap Dancing, BDSM, Porn Movies, Celebrity Porn, Erotic Stories, Sex Stories, Cock, Dick, Pussy, Interracial

Note: Categories 9 and 23 contain what we will later call "Non-Butler material"

Internet Filtering in the Library

- The question of whether to filter internet terminals in public libraries has been a controversial issue since internet services were first introduced in the 1990's
 - In the United States, the controversies have included numerous attempts to mandate filtering through legislation and several court cases
 - There has been less controversy in Canada, and there is no published legal case on the subject
-

Internet Filtering in the Library

- Internet filtering has generally been disfavored by the library community and its associations on the grounds of intellectual freedom and access to information grounds
 - The ALA has opposed mandatory internet filtering and has gone to court on several occasions to stop it
 - See ALA 2001 resolution opposing the enactment of the Children's Internet Protection Act by the 106th Congress, calling on the 107th Congress to repeal it, and vowing to challenge the act in court if necessary
 - In many communities, the pressures for internet filtering come from various sources but are typically met with opposition from the library boards
 - In the U.S., after unsuccessful attempts to mandate internet filtering failed to pass muster under the First Amendment, Congress passed the
 - There has been less controversy in Canada, and there is no published legal case on the subject
-

Statement on Library Use of Filtering Software

ALA Intellectual Freedom Committee

On June 26, 1997, the United States Supreme Court in [Reno, Attorney General of the United States, et al. v. American Civil Liberties Union, et al.](#), issued a sweeping reaffirmation of core [First Amendment](#) principles and held that communications over the Internet deserve the highest level of Constitutional protection.

The Court's most fundamental holding was that communications on the Internet deserve the same level of Constitutional protection as books, magazines, newspapers, and speakers on a street corner soapbox. The Court found that the Internet "constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers," and that "any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox."

ALA Resolution on the Use of Filtering Software in Libraries (1997)

WHEREAS, On June 26, 1997, the United States Supreme Court issued a sweeping re-affirmation of core First Amendment principles and held that communications over the Internet deserve the highest level of Constitutional protection; and

* * *

RESOLVED, That the American Library Association affirms that the use of filtering software by libraries to block access to constitutionally protected speech violates the [*Library Bill of Rights*](#).

ALA Council, July 1997

CIPA

- Children's Internet Protection Act (CIPA) enacted in 2000 forbidding libraries from receiving e-rate or LSTA funding unless filtering software is used
 - 2001 ALA resolution called on Congress to repeal CIPA or ALA would litigate it
 - Trial ct ruled CIPA unconstitutional in ALA v US
 - USSC plurality opinion, 4 of the 9 justices (Rehnquist, O'Connor, Scalia & Thomas) upheld CIPA as within the Congress' broad "spending power"
-

CIPA upheld in US v ALA

- Plurality finds internet filtering not a first amendment violation constitutional violation
 - Kennedy & Bryer filed separate concurring opinions on different grounds
 - Stevens, Souter & Ginsberg dissented
 - Question of “as-applied” challenge left open
 - Many libraries in US have complied in order to retain funding. Others have refused to comply
 - <http://www.supremecourtus.gov/opinions/02pdf/02-361.pdf>
-

No similar mandate in Canada

- In fact there is no instance of a published decision on internet filtering in Canada. It is an open and untested question.
 - **Research Question:** How would the Canadian Courts respond to a challenge to internet filtering in a public library brought under the Charter of Rights and Freedoms?
-

Canadian Charter of Rights and Freedoms Analysis

Section 1.

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Section 2.

Everyone has the following fundamental freedoms:

- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
-

Charter Analysis: General

There have been numerous cases finding an infringement of section 2(b) where the measure was upheld as a reasonable measure under section 1.

The Supreme Court of Canada has adopted a two-step test to decide if an individual's freedom of expression has been infringed.

- first : determine whether the activity falls within freedom of expression (is expressive activity involved)
- second: determine whether the purpose or the effect of the impugned government action is to restrict that freedom

If there is an **infringement of freedom of expression**, the inquiry then turns to whether it can be **justified under section 1**.

Charter Analysis: General

- Courts would likely find internet filtering by a public agency an infringement of expressive activity (including the right to receive information which is read into section 2b)
 - The more difficult question would be whether it is justifiable under section 1.
 - Courts have found infringements of expression rights in cases involving hate speech, obscenity and even child pornography.
 - But such measures were found to be reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
-

How would a filtering challenge be decided under section 1?

- Assuming the court finds the charter applicable (a public library is a creature of provincial legislation and its board is appointed by the municipal council). . .
 - And assuming an infringement of expressive activity is found (which is exactly what filters are designed to accomplish)
 - Then the analysis would turn to section 1. Is the measure *a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society?*
-

How would a filtering challenge be decided under section 1?

- In a series of cases, the courts have developed several tests to determine if the section 1 standard has been met.
 - The four part analysis of the what constitutes a reasonable limit in a democratic society is known as the Oakes test is applied. . .
-

Oakes test

The test for “reasonable limits” was established in R. v. Oakes, [1986 CanLII 46 \(S.C.C.\)](#), [1986] 1 S.C.R. 103

First: Look at the importance of the objective of the limiting measure. The objective underlying the limitation must be of sufficient importance to warrant overriding a constitutionally protected right or freedom

Second: The means chosen to reach this objective are must be proportionate. What is the reasonableness of the means adopted to achieve the objective (there are three components to this second question, hence four parts to the Oakes test)

The onus is on the government to establish the elements of justification under section 1

Oakes: Legitimate Objective

- Objective must be sufficiently important to justify overriding a protected right
 - Objective must relate to concerns which are pressing & substantial in a free and democratic society
 - Courts have been deferential to legislative judgments
 - How the this legislative purpose / objective is defined will be important in later analysis. If the objective is narrowly stated, it may be easier to justify the limitations as proportionate in later analysis (or if stated too broadly, proportionality may be harder to justify)
-

Oakes: Legitimate Objective

- The Oakes case dealt with the constitutionality of a reverse onus presumption that required the accused found in possession of drugs to show that they lacked the intent to traffic in the drugs
 - As to the first prong of the test, the court found that there was a legitimate governmental objective in curbing traffic in drugs.
 - In other cases, courts have found legitimate objectives in curbing hate speech and the harms caused by pornography.
 - A court would likely find that internet filtering meets this requirement.
-

Oakes: Proportionality

It's not enough for there to be a legitimate objective for the limitation -- limitation must be proportionate to the objective -- three strands to this inquiry:

1. rational connection between the objective and the limitation - it cannot be arbitrary or capricious (**no shifting purpose**)
 2. Minimal Impairment test: Would there be other reasonable way to satisfy the objective that would have less impact on the right being considered? While Oakes spoke of "least restrictive means" later cases relax the standard so the measure chosen needn't absolutely be least restrictive alternative. The government should show why a less restrictive alternative would be inadequate.
 3. Overall balance/proportionality between objective and the means used
-

Some applications of the Oakes test

- Compelling the observance of Christian Sabbath not a compelling objective (*R. v Big M Drug Mart*)
 - Requiring recital of Lord's Prayer in public schools not a permissive objective (*Zylberberg v Sudbury Bd of Educ*)
 - Province denying protection of its Human Rights laws to gays/lesbians lacked proper objective (*Vriend v Alberta*)
 - Rational connection (and legitimate objective) exists for curbing cigarette ads (*RJR v Canada*)
-

Some applications of the Oakes test

- Limiting obscenity (based on harm- not morals) legitimate interest ([*R. v Butler*](#))
 - Limiting harm caused by hate-speech legitimate interest ([*R. v Keegstra*](#))
 - Banning publication of opinion polls within three days of election not based on legitimate interest -- objective of giving voters a period of poll-free rest and reflection rejected ([*Thomson Newspapers v Canada*](#))
 - Province denying protection of its Human Rights laws to gays/lesbians lacked proper objective ([*Vriend v Alberta*](#))
 - Rational connection (and legitimate objective) exists for curbing cigarette ads ([*RJR v Canada*](#))
-

Limitations on Pornography & Hate-Speech

- Pornography (and hate-speech) qualify as protected expressive activities as they convey a message
 - Provisions criminalizing certain forms of pornography (obscenity and child pornography) and certain hate speech are considered infringements of expression, but are upheld as reasonable section 1 limitations
 - Crucial analysis in these cases is under sec. 1.
-

Obscenity: Criminal Code Sec. 163

(1) Every one commits an offence who

- (a) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any **obscene** written matter, picture, model, phonograph record or other thing whatever; or
- (b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation a crime comic.

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

- (a) sells, exposes to public view or has in his possession for such a purpose any **obscene** written matter, picture, model, phonograph record or other thing whatever;
- (b) publicly exhibits a disgusting object or an indecent show;
- (c) offers to sell, advertises or publishes an advertisement of, or has for sale or disposal, any means, instructions, medicine, drug or article intended or represented as a method of causing abortion or miscarriage; or
- (d) advertises or publishes an advertisement of any means, instructions, medicine, drug or article intended or represented as a method for restoring sexual virility or curing venereal diseases or diseases of the generative organs.

But What is *obscenity*?

Is it narrower than pornography?

Obscenity is defined in section 163(8) of the Criminal Code:

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

- Note how this definition is much narrower and specific than merely being *sexually explicit*.
- Not all pornography is obscene.
- This definition of obscenity was upheld in [*R. v Butler* \(1992\)](#)

R. v Butler (1992)

- Butler (a sex shop operator) was convicted of selling and possessing obscene material under section [163](#) of the Criminal Code.
 - The court unanimously agreed that the prohibition of obscenity was an infringement of the right to expression under section 2(b)
 - The majority went on to find the provision justified under section 1. The definition of obscenity was limited– it did not apply to ALL materials that were sexually explicit
 - The specific forms of exploitation of sex (must be undue or combined with or of sex and any one or more of the following crime, horror, cruelty and violence) were deemed harmful to society
-

R. v Butler (1992): Upholds sec. 163

- The specific forms of exploitation of sex (must be undue or combined with or of sex and any one or more of the following crime, horror, cruelty and violence) were deemed harmful to society
 - Harm was not based on offense to morals (as under previous decency laws) but based on harm to society, particularly to women.
 - Law was drafted with enough specificity so that it was not excessively vague.
 - Legitimate objective requirement was met – avoidance of harm to society (not merely a moral statement)
-

R. v Butler (1992): Upholds sec. 163

- Sufficiently important objective (as in limitation upheld re hate-speech in [Keegstra](#) in 1992)
Legitimate objective requirement was met – avoidance of harm to society (not just on moral grounds)
- Restriction satisfies proportionality requirements as it does not extend beyond material that creates appreciable risk to society
- Provision does not extend to serious artistic expression nor to private possession of obscene materials (note that in the case of child pornography, possession itself is also prohibited and this was upheld in [R. v Sharpe](#) in 2001)

Libraries may limit “Butler” materials, and should undertake due diligence to do so

- Materials that fit the definition of obscenity as upheld and interpreted in the Butler decision are referred to as “Butler materials”
- There would be no issue with a library blocking content if it were limited to “Butler materials”
- In fact, libraries should exercise diligence in protecting the public from exposure to Butler materials on its premises.
- The question becomes how to do that without at the same time limiting access to non-Butler materials

Some important Post-Butler cases

- *R v Sharpe* (S.C.C. 2001)
 - *Little Sisters Book and Art Emporium v Canada* (S.C.C. 2000)
 - *R v Glad Day Bookshops* (2004, Ont SCJ)
-

R v Sharpe (S.C.C. 2001)

- accused charged with two counts of possession of child pornography under s. [163.1](#)(4) of the Criminal Code and two counts of possession of child pornography for the purposes of distribution or sale under s. 163.1(3).
 - Crown concedes infringement of section 2b rights, but argued that the justification under s. 1
 - Both the trial judge and the maj of the British Columbia Court of Appeal ruled that the prohibition of the simple possession of child pornography as defined under s. 163.1 of the Code not justifiable.
 - SCC allowed appeal should be allowed and the charges remitted for trial.
 - Court read in two peripheral exclusions relating to expressive material privately created and kept by the accused-but otherwise upheld provision
-

Little Sisters Book and Art Emporium v Canada (2000)

- Customs Tariff Act prohibits importation of obscene materials into Canada and authorizes
- G-L Bookstore challenged provisions of Act as well as discriminatory treatment of G-L materials.
- Claim that the Butler test (which uses a single community standard) is discriminatory was rejected
- While the majority (6-3) rejected claim that the Butler test is unconstitutional in its treatment of G-L erotica, the court agreed that the administrative failures in applying the act were sufficient to grant relief and additional guidelines were established (dispute iss ongoing)

Little Sisters Book and Art Emporium v Canada (2000)

- More info about the ongoing controversy is at their website <http://www.littlesistersbookstore.com>
- Site was originally classified by Netsweeper as (23) pornography so would have been blocked at LPL)
- The 23 rating applied to text-only pages in the case archive as well as some of the more picturesque product descriptions in the catalog (tested September 17, 2007 at <http://www.netsweeper.com/Support/Test%20A%20Site>)



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- LIBRARY
- SUPPORT
- COMPANY

- HOME
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Legend	
	Category result okay
	Content is being scanned, refresh
	Access Denied to CNS API

Result	URL	Category
	http://www.littlesistersbookstore.com/	Arts & Culture [2] Pornography [23]

[Back](#)

Case Studies

[Prince George's County Public Schools](#)

Prince George's County Public Schools (PGCPS) knew exactly what they required in a filter and had established a very clear set of filtering goals.

- [print this page](#)
- [email this page](#)



This website has since been reclassified

R v Glad Day Bookshops (2004)

- Act required submission of films to review board prior to exhibiting or distributing. D. shows film without submitting for review. Conviction at trial court
- Superior Court on appeal found the statutory scheme violates section 2(b) and is not justified by section 1. Provisions of Act stricken--Theatre Act continues to apply to classification (which was not in issue)
- First strand of Oakes test satisfied - there is a legitimate government objective -- to reduce harm to society associated with the dissemination of pornography (like Butler)
- Second strand satisfied too (rational connection between challenged provision and legitimate objective- also relying on Butler)
- But third (no more impairment than necessary and fourth (balancing benefits of law with its deleterious effect) prongs not met

R v Glad Day Bookshops (2004)

- The detailed analysis provided under the third prong is particularly relevant to the filtering issue
 - Court characterizes measure as a prior restraint (which are viewed with disfavour as particularly strong restraints on speech as contrasted with less onerous provisions for subsequent prosecutions)
 - Court analyzes four separate flaws of a system of prior restraint:
-

Glad Day Court analyzed four separate flaws of a system of prior restraint

1) breadth of potential censorship

- very broad as to films to which it applies (all films),
- range of subject matter in its ambit (more than just Butler materials)
- and viewers it affects (all viewers, not just children)

2) delay in publication of time sensitive material (not a problem)

3) lack of transparency

- while the regulations are available to the public, the Board also used confidential internal guidelines that were not.
- public would not know if a film was ordered cut in part
- nor does Board prepare an annual report listing what was censored

4) propensity to favour censorship over speech

- even at just a 3% censorship rate (550 films over last five years) it is still exercise of censorship is not infrequent. To properly analyze this evidence, court would have to look at cut segments to see how discretion was exercised and this was not provided

Court's analysis leads to rejection of 3rd prong

- Court holds government failed to uphold its onus of showing that the adopted measures impair the Charter no more than necessary
- while no appreciable delays in distribution, the transparency could be improved but the biggest problem for the court was the wide breadth of the potential censorship
- government failed to provide any evidence of potential harm that could result to groups or to society from non-Butler materials. Government could have produced more evidence on this but they did not
- while it was evident to the court that the materials were not suitable to children, the statutory scheme did not distinguish between children and adults
- government failed to show why a less intrusive means would not have satisfied its objective
- while not necessary to do so, court also says fourth prong not satisfied

Some tentative conclusions

- ◆ The Glad Day case seems particularly adaptable to the filtering issue
 - ◆ A court would likely find a violation of section 2b, and would also likely find a legitimate government objective that is based on the prevention of harm
 - ◆ Whether the other strands of the Oakes test could be met are more problematic
 - ◆ Particular problems in justifying this analysis could include the failure of the library to articulate an objective in any but the most general of terms. While the general articulation of the objective might satisfy the first strand of the analysis, it will make compliance with the other tests more difficult.
-

Some tentative conclusions

- ◆ It is not at all clear that there is even an appreciable measure that is “prescribed by law” in this case
 - ◆ Even if a court were to overlook that flaw in the initial stage of the analysis, it would present a problem in the later stages of the Oakes analysis
 - ◆ Other problems will include:
 - ◆ The lack of transparency in terms of how sites are selected for blocking, and what sites have been blocked is particularly problematic
 - ◆ the apparent inclusion of non-Butler materials in terms of what is being blocked
 - ◆ The failure to exhaust less restrictive alternatives such as furniture arrangement or limiting filtering to the children's' rooms
-

Some tentative conclusions

Treating the issue of internet filtering in LPL under the assumptions of the “customer service” paradigm (which includes an appeal to local moral standards, weighing responses in terms of customer satisfaction, vague and shifting objectives, and the denial that there is even an issue of intellectual freedom) will not help establish the necessary justifications under section, the onus of which is always on the government.

The imposition of filtering software by the London Public Library in the adult sections of the library and throughout the wireless network created a system of prior restraint and censorship of internet content that infringes section 2b of the *Canadian Charter of Rights and Freedoms* and may not be justifiable under section 1

LPL Board reverses filtering decision in 2008- with ongoing annual review

- LPL Board finally persuaded to seek independent legal counsel after receiving June 2008 letter from CIPPIC

“We have become aware of the London Public Library’s . . . project to filter internet content in its public-access internet terminals. We write out of concern that, in its zeal to provide a safe environment for library patrons, the Board has imposed an impermissibly restrictive approach to the filtering of the internet that violates the Canadian Constitution’s protection of freedom of expression as enshrined in s. 2(b) of the Charter of Rights and Freedoms.”

- Policy reversed later in 2008 after receiving Lerner’s opinion (not released) but summary suggests agreement with CIPPIC
 - New policy calls for annual review of LPL internet policies
 - Now on LPL agendas for October and November 2011
 - See 2010 Annual Review Report at http://www.londonpubliclibrary.ca/sites/default/files/7BInternetServicePolicyAnnualReview_1.pdf
-

[rotten](#) > [Library](#) > [Crime](#) > [Prison](#) > Abu Ghraib

ABU GHRAIB

AKA ABU GHURAYB, ABU GRHAIB

The White House really wants you to know all about the atrocities that happened at Abu Ghraib... all of the ones that happened before 2003.

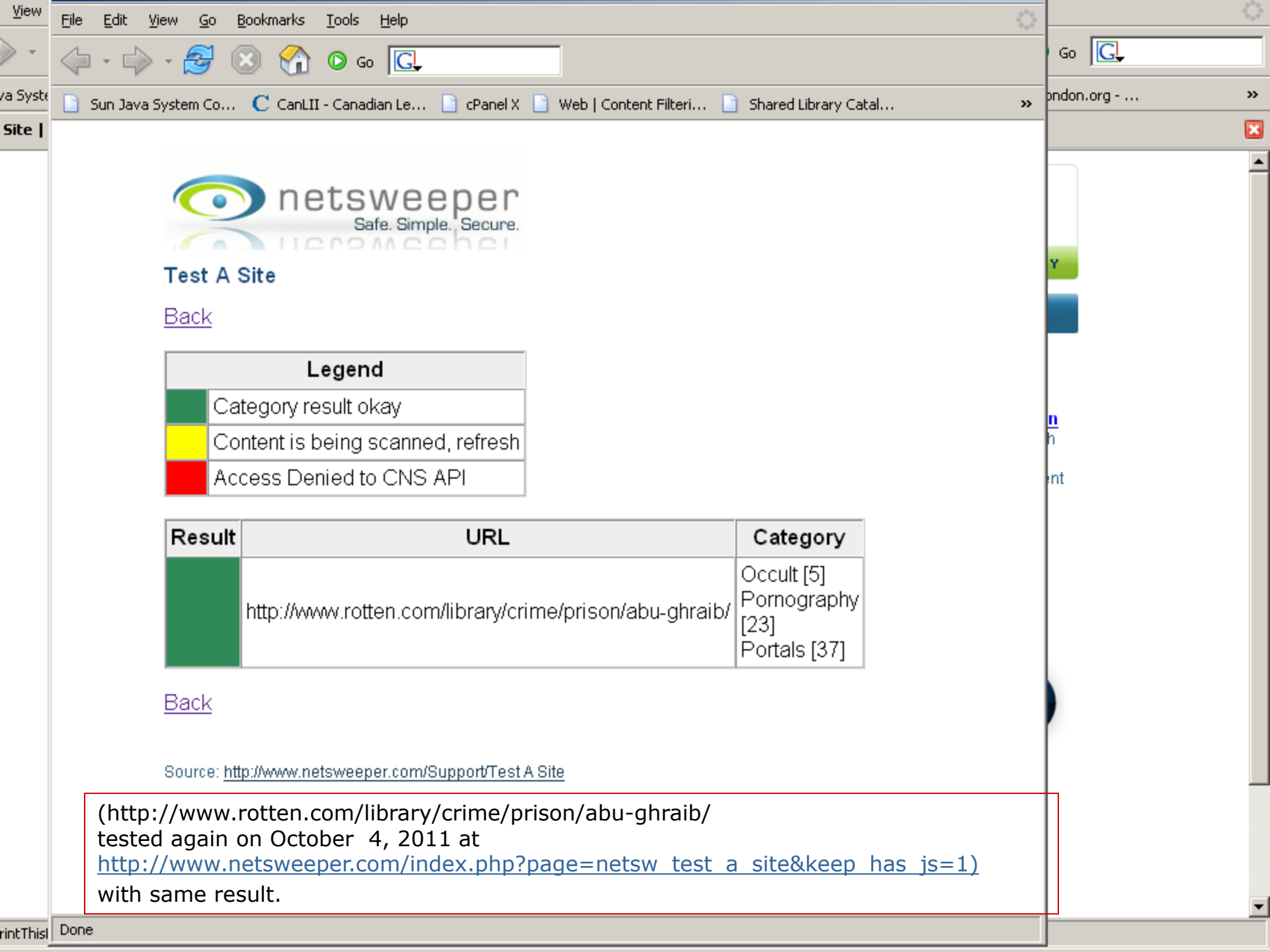
The White House's Web site features a charming little page called *Tales of Saddam's Brutality*. Posted in September 2003, the idea behind the page was simple: Overwhelm people with visceral stories of evil [Saddam Hussein](#), in order to prop up an increasingly unpopular invasion of [Iraq](#) that was originally based on the idea that Saddam was hoarding [weapons of mass destruction](#).

By fall 2003, it was starting to look like those weapons were never going to show up, so the [Bush administration](#) began unsubtly revising history to reflect the fact that the U.S. went into Iraq to get rid of "a bad man."

After all, no one in George Bush's America would dare suggest that the Iraqi people weren't better off with Saddam out of the way. And Saddam [and Sons](#) were indeed pretty atrocious, in the strictly literal sense of authoring atrocities.




Indeed, the evidence was all there, in the Tales. Perhaps they finally learned their lesson about taking information from the





Test A Site

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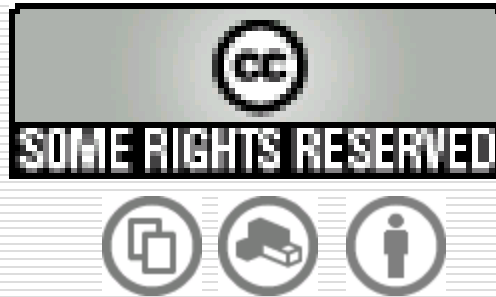
Legend	
	Category result okay
	Content is being scanned, refresh
	Access Denied to CNS API

Result	URL	Category
	http://www.rotten.com/library/crime/prison/abu-ghraib/	Occult [5] Pornography [23] Portals [37]

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Source: <http://www.netsweeper.com/Support/Test A Site>

(<http://www.rotten.com/library/crime/prison/abu-ghraib/>
 tested again on October 4, 2011 at
http://www.netsweeper.com/index.php?page=netsw_test_a_site&keep_has_js=1)
 with same result.



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