

**BEFORE THE TELECOMMUNICATIONS ACCESS POLICY DIVISION,
WIRELINE COMPETITION BUREAU
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Rules for Implementing Filtering Requirements of
The Children's Internet Protection Act
As Applied to Public Libraries under
United States v. American Library Association

CC Docket No. 96-45

EX PARTE COMMENTS OF N2H2

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N2H2, Inc. submits these comments for consideration by the Wireline Competition Bureau (Bureau) as it promulgates rules for public libraries to implement software filtering requirements in conformity to 21 U.S.C. 2134 and the decision by the U.S. Supreme Court in *U.S. v. American Library Association (ALA)*, No. 02-361, 2003 U.S. LEXIS 4799 (June 23, 2003), upholding the constitutionality of the Children's Internet Protection Act (CIPA).

N2H2, Inc. is the world's largest provider of technology protection software for CIPA compliance. N2H2 is the market leader in filtering software in public schools in the United States, with a 40% market share, providing filtering to over 25,000 public schools, as well as over 1,000 public libraries.

When the FCC issued final rules for the implementation of CIPA in March 2001, the FCC refused to provide any technical specifications for what a "technology protection measure" should include. This finding pleased N2H2, as we strongly feel that picking the proper "technology protection measure" should be a local decision made by individual schools and libraries.

In March 2001, the FCC correctly rejected requests to set effectiveness standards, as well as "unblocking" standards:

33. Some commenters have requested that we require entities to certify to the effectiveness of their Internet safety policy and technology protection measures. However, such a certification of effectiveness is not required by the statute. Moreover, adding an effectiveness standard does not comport with our goal of minimizing the burden we place on schools and libraries. Therefore, we will not adopt an effectiveness certification requirement.

53. Section 254(h)(5)(D) and (6)(D) permits a school or library administrator, supervisor, or other person authorized by the certifying authority, to disable an entity's technology protection measure in order to allow bona fide research or other lawful use by an adult... We decline to promulgate rules mandating how entities should implement these provisions. Federally-imposed rules directing school and library staff when to disable technology protection measures would likely be overbroad and imprecise, potentially chilling speech, or otherwise confusing schools and libraries about the requirements of the statute. We leave such determinations to the local communities, whom we believe to be most knowledgeable about the varying circumstances of schools or libraries within those communities.

Another controversy surrounding technical specifications of filtering software is the publication of the criteria used to block websites. N2H2 has long published a detailed description of the criteria it uses to categorize websites. An 8-page document describing our blocking criteria is available on our website at <http://www.n2h2.com/products/categories.php>.

Two independent studies, one conducted by the Kaiser Family Foundation² and published in the Journal of the American Medical Association, and another conducted by eTesting Labs for the Department of Justice³, have found N2H2 the most effective filter at blocking pornographic websites. N2H2's filtering products are also easily disabled at the workstation level by having a library staff member simply type in a username and password.⁴

Since N2H2's products are among the most easily disabled by staff, and have been shown to be among the most effective, and N2H2 publishes its blocking criteria, N2H2 would almost certainly benefit from the FCC imposing "effectiveness," "unblocking," and "open criteria" standards.

Nevertheless, N2H2 strongly opposes regulations by the FCC that require a degree of effectiveness, a degree of ease in disabling or unblocking a filter, or a degree of disclosure in blocking criteria. We feel that technical specifications regarding "technology protection measures" must remain local decisions.

Therefore, we urge the FCC to take no rulemaking actions that would favor one technology protection measure vendor over another, and let the free market and local libraries and schools choose appropriate filtering solutions.

Sincerely,

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¹ FCC Federal-State Joint Board on Universal Service, Children's Internet Protection Act, April 5, 2001

² Kaiser Family Foundation, "See No Evil: How Internet Filters Affect the Search for Online Health Information," by Paul Resnick, Ph.D., and Caroline Richardson, Ph.D., of the University of Michigan. December 10, 2002. Available at http://www.kff.org/content/2002/3294/Internet_Filtering_exec_summ.pdf

³ "U.S. Department of Justice: Web Content Filtering Software Comparison," eTesting Labs, October, 2001. Available at <http://www.etestinglabs.com/clients/reports/usdoj/usdoj.pdf>

⁴ See, "Finding the product that's right for you," N2H2 Websites, available at http://www.n2h2.com/product_finder_bess.php?feature=ao