

Name of the commenter: Seth Finkelstein

Comment number(s) of comment(s) to which you are responding

Thirty-one (31)

Class or classes of copyrighted work(s) that original comment proposed to be exempted

Compilations consisting of lists of websites blocked by censorware ("filtering software") applications.

Brief summary of the argument(s) in support

- a) As a pre-emptive reply, the "blacklist wars" among censorware companies, that is, the marketing tactic of a censorware company distributing sites (such as sex sites) not blacklisted by OTHER censorware companies, should preclude any complaints by censorware companies of negative social effects of blacklist investigations.
- b) The investigation of censorware blacklists has played a further role in the Children's Internet Protection Act (CIPA) Supreme Court case, as I (Seth Finkelstein) am an *amicus curiae* in that case based on my work.

Full version

To the Librarian of Congress:

Pursuant to the rulemaking proceeding mandated by the Digital Millennium Copyright Act, which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works, the following is additional information I would like to submit in support of my comment arguing for a DMCA exemption regarding circumvention for accessing censorware blacklists.

More pre-emptive replies to expected censorware company opposition

I expect censorware companies will claim that investigation of their blacklists may have some sort of deleterious effect on children. In rebuttal to any sort of contention here, I would like to draw attention to "blacklist wars" among censorware companies.

For many months, one censorware company (Websense), deliberately and wilfully, as a promotional tactic, every work day distributed a collection of sites not blocked by two *other* censorware companies. This explicitly (pun intended) included a dozen sexual sites sites. And the list was different for each targeted censorware company. Again, each work day, one could go to the Websense site, and receive a brand-new list of a dozen sexual sites which would not be blacklisted by the targeted censorware (I am not making this up, and I found it hilarious).

This was covered by MSNBC, in an article [Websense links to X-rated sites that it says rivals didn't block](http://www.msnbc.com/news/774905.asp?cp1=1) (<http://www.msnbc.com/news/774905.asp?cp1=1>). Websense was specifically not concerned with the impact

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on children:

"[The vice president of marketing for Websense] said company executives were not concerned that kids would use the tool to access objectionable content that that might otherwise be blocked by their parents, teachers or librarians because the company's site caters to corporations and government entities rather than the public."

Given such marketing tactics of a censorware company, it seems the height of hypocrisy if any comment argues for draconian legal prohibitions on censorware blacklist investigations by using children as an excuse.

In fact, it may be counter-intuitive, but censorware blacklists aren't very good general sources for sex sites anyway. The blacklists are full of junk such as no-longer existing sites, duplications, sites which are just parked domain-names, and so on. Contrary to some sniggering questions I sometimes receive, censorware blacklist investigation is extremely boring and tedious. People who want lists of sex sites can find plenty of those in various directories on the net, with the advantage of editing and organization by interest. Moreover, the sites on a censorware blacklist are presumably all blocked by that censorware, so it's hard to see where there's a significant negative social impact when they are investigated. The only issue would be possibly exploiting the lack of overlap, and per above, censorware companies themselves have deliberately distributed unblocked sex sites, even to children, as a marketing tactic – something not done by any investigator.

Additional information as to the value of censorware investigation

Since I wrote [my original DMCA censorware exemption comment](http://sethf.com/myoriginaldmcaexemptioncomment.php) (<http://sethf.com/anticensorware/legal/dmccom.php>) I have been selected as an *amicus curie* (friend-of-the-court) for the [CIPA trial](#) (along with the [Online Policy Group](#)). The amicus brief is at <http://www.onlinepolicy.org/action/legpolicy/cipasupremebrief030210.pdf> . It cites my work extensively. The knowledge I gained specifically from circumvention figured into evaluating the evidence to present (especially its quality), and providing insights into how the actual functioning of censorware interacted with Constitutional constraints. My work on structural, *architectural* issues, was specifically noted. i.e. [BESS's Secret LOOPHOLE](#) (<http://sethf.com/anticensorware/bess/loophole.php>).

The brief described me as follows:

Seth Finkelstein is a computer programmer and civil liberties advocate. Since 1995, he has dedicated thousands of hours to studying commercially developed Internet blocking software. These efforts have revealed many of the mechanisms employed by blocking software, which Mr. Finkelstein has described in articles and reports. For his efforts "in the fight against government mandated use" of such software, Mr. Finkelstein received the Electronic Frontier Foundation's Pioneer Award. Mr. Finkelstein is interested in ensuring that the Court understands how commercially developed blocking software operates and the dangers that it poses to free speech.

I write this to indicate how much of a contribution my work has made, stated above in an *amicus* brief to the highest court in the land. Again, those efforts were nearly extinguished by the fear of DMCA liability in the past, and will be essentially prohibited if the exemption is not renewed.

Sincerely,

[Seth Finkelstein](#)