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February 13, 2023

Chairperson Larson
and Members of the Senate Judiciary Committee,

I am reaching out to urge you to oppose SB 2360 for a variety of reasons.

First, much of this bill is redundant and unnecessary. The guidance regarding filtering doesn't reflect safeguards libraries already have in place. Public schools and most public libraries must have filters under CIPA (Children's Internet Protection Act). Even libraries that are not required to do this choose to do so as an extra precaution when parents are not observing their children's computer use in the library.

Regarding the portion of SB 2360 related to digital and online databases (section 5): similar allegations stating that users have access to pornography through databases have been made in several other states. However, public libraries and school districts have been unable to reproduce the search results alleged by the bill's proponents. In addition, the idea that students use educational databases to access pornography is false; these databases gather educational and mainstream media resources for academic use. Further, this is not a North Dakota issue; it is an issue brought on by national organizations trying to restrict our citizens' access to information. I have included research and statements from Colorado and Indiana with my testimony to demonstrate this.

Additionally, children must learn to safely and effectively navigate the internet and databases to ensure success in school, college, and careers. Libraries help do this by providing educational resources as well as assistance using them. However, with the prevalence of technology available to people of all ages *outside* of a library setting, I don't understand why such effort is being placed on securing places that are already secure.

Again, this is a parent issue, not a school or library issue. Both of my teenage children have smartphones, and as a parent, I have taken precautions to block mature content and limit what they can access. However, I understand that their friends may not have the same restrictions, so I am honest with them about our family's expectations and values; they know there will be consequences if they do not meet these. I would not blame (or file criminal charges against) the

parents of these other kids if my son or daughter chose to make bad decisions. Unfortunately, SB 2360 is looking to do precisely that – it is looking for a scapegoat.

SB 2360 also appears to be proposing a change to the NDCC’s definition of “obscenity.” Though minor, these changes are concerning and bewildering. Below I have included the current definition, the proposed definition, and the definition most commonly used throughout the country and upheld by the US Supreme Court.

CURRENT:

12.1-27.1

12.1.27.1-01

5. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:

- a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
- b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
- c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

PROPOSED:

12.1-27.1

12.1.27.1-01

5. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:

- a. Taken as a whole, the average person, applying ~~contemporary~~ North Dakota standards, would find predominantly appeals to a prurient interest;
- b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
- c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, ~~political~~, or scientific value.

Whether material or a performance is obscene must be judged with reference to ~~ordinary~~ **reasonable** adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

MILLER TEST:

These guidelines are the three prongs of the Miller test. They are:

- (1) whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest;
- (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

These 3 versions raise some questions I hope you will consider:

- 1.) 1.) Why remove “contemporary” from 5a? This seems unnecessary unless the intent is to purposefully **NOT** seek contemporary standards and instead fall back on pre-2023 standards. Does this mean materials will be judged based on the standards of 1973 or perhaps 1923?
- 2.) 2.) Why remove “political” from 5c? Are issues related to homosexuality and gender identity considered to be “political” by some, and that’s why this proposed change? If so, how will the courts determine if such issues are political?
- 3.) 3.) In general, the US Supreme Court has already laid the groundwork for defining obscenity in Miller v. California (1973), which would be suitable for North Dakota. Why not simply use this definition?
- 4.) 4.) Finally, the replacement of “ordinary” with “reasonable” in the last paragraph is concerning. Who will define reasonable? The Miller Test is already lenient in its use of “contemporary community standards,” so why change this further?

Finally, I am again concerned about the removal of exceptions to criminal liability for public libraries. It is beginning to feel like ND legislators are attacking our profession, and it’s difficult not to take this personally. Rather than commending and praising public libraries for all they do for your communities (story times, meal programs, access to needed resources, connection to social services, and much more), certain legislators are overshadowing and demeaning this good work because they don't personally agree with how some of their constituents use the library.

I apologize for the length of this letter. As a librarian, I am passionate about ensuring all North Dakotans have access to information. As a parent, I am equally passionate about not allowing others to decide what my children can access. I hope you will agree that SB 2360 is unnecessary and will recommend a “Do Not Pass” vote.

Respectfully,



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The Colorado Library Consortium Executive Director Jim Duncan wrote the following when Colorado faced similar accusations:

Since late 2016, schools and public libraries across Colorado have been under attack for licensing electronic products and for delivering those resources to their communities. This has been well documented and consistently reported through the media, through open board meeting minutes, in professional publications and verbatim testimonials to legislative bodies.

Accusers claim that databases and e-book collections are full of pornography and that vendors, schools and libraries are all complicit in harming children. This tiny but vocal network of individuals consistently demands a ban of databases and e-book products from library vendors like EBSCO, Gale/Cengage, Proquest and Overdrive. These individuals promote their unsubstantiated opinions and conspiracy theories to the media—and to boards, administrators & legislators—all in an effort to stir up controversy and spark outrage. In 2019, they garnered more media attention while wasting taxpayer-funded resources through a frivolous, failed lawsuit brought against the Colorado Library Consortium (CLiC).

Our nation's schools and libraries possess the expertise and responsibility to choose, license or buy content useful to their local communities—utilizing professional library collection management policies and procedures. Rightfully so, libraries and schools across the country are trusted by their communities and reflect the best qualities and values of our society. These institutions promote the American ideal: celebrating the spirit of exploration, lifelong learning, the joy of reading, and the pursuit of information and knowledge for all ages and cultures.

(Duncan, Jim. (2021) Demanding a Ban on Digital Content: A Guide for Understanding Challenges to the Electronic Resources in Your Library or School, *Colorado Library Consortium*, p.2.)

<p>WHAT ARE THESE ONLINE RESOURCES?</p>	<p>Databases are simply collections of published material made available online. They can contain content from mainstream magazines, newspapers, books, guides, car repair manuals, educational videos, photos and imagery, genealogy and more.</p> <p>These products offer sophisticated searching and other features -- designed to help individuals and students find what they're looking for.</p>
<p>WHERE CAN YOU FIND THEM?</p>	<p>In public libraries you'll find these kinds of online resources under web site sections like "Research" or "Digital Media" or "Online Databases."</p> <p>In schools, it varies. Sometimes the school has a web site with links to licensed online resources; other times, the school may only provide access while inside the building—from within a computer lab or classroom.</p> <p>In all cases, a patron or student can only access these resources with a library card or other form of login identification. These digital resources are not freely available on the open Internet.</p>
<p>HOW ARE ONLINE RESOURCES SELECTED?</p>	<p>Available from a variety of vendors and publishers, databases and other digital resources are voluntarily licensed by a small number of schools and many public libraries across Colorado.</p> <p>Nationwide, school educators and librarians make purchasing decisions based on collection development guidelines or curriculum needs, much the same way these organizations decide what books to buy.</p>

*From the Colorado Library Consortium, 2021
(emphasis added)*

<p>WHAT IS THIS CONTENT THAT IS CAUSING SO MUCH CONTROVERSY?</p>	<p>Concerns have been expressed about words and images published in newsstand magazines like <i>Cosmopolitan</i>, <i>Ebony</i>, <i>Esquire</i>, <i>Glamour</i>, <i>GQ</i>, <i>Men's Health</i>, <i>Redbook</i>, <i>Rolling Stone</i>, <i>Vanity Fair</i>, and <i>Time Magazine</i> – publications that can be found within certain databases. In addition, these same individuals say that e-books available through Overdrive also contain graphic sexual language accessible by children.</p>
<p>WHAT ARE THE SOLUTIONS BEING DEMANDED BY SELECTED INDIVIDUALS CONCERNED ABOUT DATABASES?</p>	<p>1 Ban ALL digital content from the State of Colorado provided by companies like EBSCO, Gale/Cengage, Proquest, Overdrive and others.</p> <p>To be clear: their objections to content in publications like <i>Cosmopolitan</i> or <i>Time Magazine</i> justifies their demand that ALL electronic content be removed from all schools and public libraries.</p> <p>THAT WOULD INCLUDE BANNING:</p> <ul style="list-style-type: none"> • <i>Better Homes & Gardens</i> • <i>Bow Hunter</i> • <i>Boys' Life (Boy Scouts of America)</i> • <i>Car & Driver</i> • <i>Christian Science Monitor</i> • <i>Consumer Reports</i> • <i>Economist</i> • <i>Highlights</i> • <i>Horse & Rider</i> • <i>Ranger Rick</i> • PLUS 96,954 ADDITIONAL MAGAZINE OR JOURNAL TITLES ACROSS A VARIETY OF DATABASES <i>(this number would be slightly less in ND)</i> <p>2 Take away the local authority of schools, districts and public libraries to purchase or license databases and electronic content. Eliminate taxpayer funding that could be used by schools or libraries to license digital materials.</p> <p>3 Through legislative action, create laws that enable individuals to sue and/or receive monetary damages from schools, libraries and other institutions that license or deliver electronic content deemed offensive and harmful by those individuals.</p>

<p>NO SERIOUSLY, HOW BIG A PROBLEM IS THIS?</p>	<p>These individuals claimed that databases from EBSCO and other providers contain at least 200 obscene articles, stories and images of a graphic nature. The claim: “There’s just <u>so much</u> pornography that we’ve lost count...”</p> <p>Even if it were true, that amount represents .0005% of content available through the EBSCO databases licensed by many libraries in Colorado... which contain more than 175 MILLION articles (of which 127 million are full text)</p> <p>Similarly, products from Gale/Cengage and Proquest contain many millions of articles from thousands of publications. A collection of e-books available through Overdrive could hold several hundred to several thousand publication titles. Even a single “objectionable” chapter in a book would represent a tiny portion of the library’s e-book collection.</p> <p>The ongoing problem: <i>such claims are made without specific citations to publications or articles within a given database or library collection.</i></p> <p>Hundreds of librarians across the U.S. have attempted to substantiate these claims about filthy content being streamed to children through school portals, and about licensed magazines that promote pornography and prostitution, or even the claims of live hyperlinks leading to escort service websites recruiting children.</p> <p>To date, librarians have failed to replicate or confirm the validity of such claims that databases are full of pornography.</p>
<p>WHAT ARE SCHOOLS DOING AS RESPONSIBLE INSTITUTIONS?</p>	<p>Schools (and public libraries, by the way) already have full local control of their digital collections and the power to suppress availability of entire magazine titles, specific issues and even individual articles. The technical steps involved depend on the technology infrastructure provided by each specific vendor.</p> <p>Some schools choose not to provide access to selected magazines and specific digital content for lower-grade students, while choosing to expand access for high school students.</p>

	<p>Many schools choose simply not to subscribe to any vendor resources, so that students just use the Internet. These are all local financial, collection management and curriculum-influenced decisions. Concerned parents are always encouraged to engage with their local school administrators to discuss these issues and resources.</p>
<p>HOW CREDIBLE ARE THE CLAIMS?</p>	<p>One claim being made: companies licensing content from publishers – and any public libraries or school districts subscribing to digital content & online resources – are ALL “profiting from the promotion of obscene content” and receive monetary benefits from the porn and sex toys industry.</p> <p>One claim being made: public libraries and schools are unsafe for children because hardcore pornography is being streamed directly to kids, along with other forms of obscene content, and that the individuals responsible for such atrocities who work within libraries, schools, governmental agencies, and non-profit organizations are all “purveyors” of pornography and should be investigated by law enforcement.</p> <p>One claim being made: teacher/student sexual assaults are on the rise and that these teacher predators use school collections and pornography found within library online resources as a grooming tool.</p> <p>Read about these concerns for yourself: <i>“Colorado Leads the Fight to Get “EBSCO Porn” Out of Schools Across America”</i> http://www.ccsdconversations.org/2017/10/22/205/</p> <p>Then: search for yourself through your school or library’s electronic collections. Look for pornography and live links to adult escort sites. Make your own determination about credibility of these claims.</p>
<p>WHAT IS THIS “DIRTY DOZEN” LIST I’VE HEARD ABOUT?</p>	<p>According to the National Center on Sexual Exploitation, this is an annual list designed to “name and shame the mainstream players in America” that facilitate distribution of pornography. Read for yourself. https://endsexualexploitation.org/dirtydozen-2020/</p>

	<p>Established in 1962 as Morality in Media, this organization changed its name in 2015 to the National Center on Sexual Exploitation (NCOSE).</p> <p>In addition to naming the American Library Association, EBSCO, the Department of Defense, and many corporations to its Dirty Dozen list during the past several years, a renewed effort spearheaded by NCOSE is underway to protect children.</p> <p><i>“Our Schools Aren’t Safe for Children. But You Can Help”</i> https://endsexualexploitation.org/articles/our-schools-arent-safe-for-children-but-you-can-help/</p> <p><i>“Promoting Pornography-free Schools: The Role of the US Dept. of Education”</i> https://endsexualexploitation.org/articles/promoting-pornography-free-schools-the-role-of-the-us-dept-of-education/</p>
<p>I HEARD THERE WAS A BIG LAWSUIT IN COLORADO. WHAT WAS THAT ALL ABOUT?</p>	<p>In October 2018 a lawsuit was filed against EBSCO for licensing databases to libraries and schools in Colorado. Also named in that lawsuit: the Colorado Library Consortium (CLiC), an established and well-regarded nonprofit providing a variety of infrastructure services to libraries and schools statewide.</p> <p>The suit was brought by the Thomas More Society on behalf of PINE (Pornography Is Not Education), a nonprofit founded earlier in the year by two Colorado parents.</p> <p>In their civil complaint against CLiC, the plaintiffs claimed that “The Colorado Library Consortium purchases from EBSCO and knowingly brokers sexually explicit, obscene and harmful materials to Colorado school children.”</p> <p>The plaintiff’s demands were for \$100,000 and a trial by jury.</p> <p>Four short months later, in February 2019, CLiC was abruptly dropped from the lawsuit after spending more than \$35,000 in legal defense fees. https://www.clicweb.org/clic-dropped-from-lawsuit/ PINE dropped its lawsuit against EBSCO a week later.</p>

	<p>Coverage of the situation appeared in many media publications nationally, including this longer article in the <i>Colorado Sun</i>, an independent newspaper: https://coloradosun.com/2019/04/02/colorado-library-porn-database/</p>
<p>I HEARD THERE WAS SOME LEGISLATION IN COLORADO. WHAT WAS THAT ALL ABOUT?</p>	<p>During Colorado’s 2019 legislative session, a senate bill was introduced: SB19-048 “Protect Students From Harmful Material: Concerning protecting public school students from electronically accessing harmful material.”</p> <p>The bill stipulated, “A parent or legal guardian <i>may bring a civil action against an entity that provides electronically accessible educational materials</i> and... if the parent's child viewed material that is harmful to a child or obscene through the material provided by the entity. The parent or legal guardian is entitled to injunctive relief, the greater of a fine in the range of \$1,000 to \$5,000 for each violation...”</p> <p>In short: a parent could sue a school, library, or ANY entity involved in providing electronic access to educational content that the parent considers harmful or obscene.</p> <p>Members of the Senate Judiciary Committee heard testimony from individuals in support of and against the bill on 1/23/2019. This proposed legislation died in committee.</p>



Response to Questions from Senate Education and Career Development Committee Hearing on SB288, Material Harmful to Minors

Thank you for the opportunity to respond to questions raised during the Feb. 10 committee meeting. We have highlighted the information below and can provide additional detail and supporting documentation for each of the questions. – Lucinda Nord, ILF Executive Director

Internet Filtering

- Schools and public libraries must remain in compliance with the federal Children’s Internet Protection Act (CIPA), including use of utilize filtering technology to control internet access, for continued eligibility for certain federal e-rate funding. Here are the [FCC rules](#).
- Both schools and libraries must review their Internet Use Policy annually at a public board meeting.
- It is important to remember that internet search engines (i.e. Google, Bing, Edge, etc.) track searches, and the algorithms they use will serve up pop-up ads and other ad content related to prior searches. Therefore, if a person has searched “porn” on their device, they will likely see images for sites related to porn in future searches. These types of ads and sites are regularly stopped by library and school filters, but may be available on a home computer or mobile device lacking filtering software. See [analysis from Elkhart Public Library about searches](#) referenced in bill supporters’ testimony.
- School-provided devices will utilize internet filtering software and practices that the school district has approved. It is a local school district decision whether and how internet traffic on school-provided devices is sent through filters.
- Filtering is not perfect. Content filters are updated daily as new sites are available.
- Schools and libraries routinely instruct students on internet safety and coach parents how to use filters and teach internet safety on personal devices.

Questions about INSPIRE, Indiana’s Virtual Library

Libraries have tested the searches referenced in the packet provided to senators and referenced in the committee meeting.

- Libraries and schools were *NOT* able to replicate searches that resulted in pornographic sites. The school and library filters prevented such images and links to sites.
- In the reported examples, the pornographic material in question was not provided through INSPIRE or any library resource; rather, the user followed a series of links, from one site to the next, with a clear intent to find pornographic materials. The referenced sites (deeper.com, pornhub.com, lesboerotica.com, and playboy.com) are blocked by library filters and cannot be accessed on the library or school websites or their Wi-Fi.

INSPIRE, inspire.in.gov, is a robust database that regularly receives new content as scholarly research, books, periodicals, and materials are published. INSPIRE database content is constantly monitored and reviewed. If indexing is inappropriate to the age category, the Indiana State Library works with the content providers to address it.

Indiana Library Federation leads, educates, and advocates to advance library services for the benefit of Indiana residents.