

FULL TRANSCRIPT
Interview of Ernest Istook

**Author of the Children's Internet Protection Act
conducted by Dawn Hawkins of Morality in Media
17 April 2012**

Dawn: Hi, everyone. I'm Dawn Hawkins with Morality in Media and Pornography Harms and I'm here with Congressman, former-

Ernest: Former.

Dawn: Congressman.

Ernest: Yes.

Dawn: Ernest Istook. Um, we, he works, he's a distinguished fellow at the Heritage Foundation and served in the United States House of Representatives for, is it fourteen years?

Ernest: Fourteen years, right. I'm in recovery now as I tell people.

Dawn: (laughs) And, but while he was there, he authored the Children's Internet Protection Act which is very important to a number of things that we're doing at Morality in Media. As many of you know, we direct the Safe School Safe Libraries Project. The goal of that is to get filters installed on every computer in, um, in public libraries and then schools to help protect children and other patrons from exposure to pornography and the many harms associated with that in those places. We've, we've had a lot of success so far in this project. There are over 60, I think we have 63 people right now, who are volunteering and working in their local communities to urge their libraries and schools to install filters.

But the thing is that there is a federal law in existence that Mr. Istook helped to author that, um, mandates that libraries and schools have filters and provides funding for them. So, we just wanted to talk about that a little bit more and so maybe we can just delve right in.

Can you tell us about Children's Internet Protection Act?

Ernest: Sure, I think for those interested in legislative history, how this came about, uh, and this is one reason that maybe the story is not as well known because during my fourteen years in Congress, I served on the House Appropriations Committee all fourteen years. Now the Appropriations Committee deals with almost everything because just about everything the federal government does involves money.

Dawn: Has to go through them.

Ernest: Yeah. So that's one of the reasons I enjoyed being on the Appropriations Committee, because it gave me the opportunity to delve into a lot of different issues. There had been many pieces of legislation that Congress [00:02:00] had enacted that sought to address the problem of Internet pornography, especially the threat that it had to children. Those consistently were thrown out by the courts, saying it was an unconstitutional infringement upon free speech.

However, we took a different approach with the Children's Internet Protection Act, and rather than being legislation that originated through the House Judiciary Committee or the Senate Judiciary Committee, which was what had happened with these others, because it came through the Appropriations Committee and people in my office, Dr. Bill Duncan was especially involved in this, we put together legislation that rather than saying there was an outright prohibition on certain Internet pornography, we said that if the federal government is paying for something, we will add some restrictions. This is a classic use of the appropriations process to say there are strings attached to federal money. Many times those strings are negative in what they seek to make people do or prevent them from doing.

In this case, this was the way we accomplished something positive because consistently, the courts have said Congress has the authority to place limits on how federal money is used and you can adopt public policy through restrictions on federal spending rather than restrictions on everything else. That's the approach that we took.

So, it was accomplished not in a freestanding piece of legislation but as a rider on an appropriations bill. I served on the relevant subcommittee, the Health Human Services and Education and Labor subcommittee in the House and successfully got this attached during the committee process so that it was part of the spending bill for education, for labor, for human services and so forth, and it was attached to that bill. So, nobody could vote against the Children's Internet Protection Act unless they voted against the entire bill or unless they were able to strip it out from the bill [00:04:00], and that made it, that gave it some advantages in getting this enacted.

It held down the opposition and frankly, um, some of the classic opponents of things such as this like the ACLU and the American Library Association had a more difficult time opposing this effort because of the way that we went about it. So, I like to think that we made a pretty good use of the congressional process in this way.

Dawn: It worked.

Ernest: Yeah.

Dawn: (chuckles) But what does that Children's Internet Protection Act mean, what is the law, what does it do?

Ernest: Sure. It says that if you are a school or if you are a library that receives federal funding for Internet access such as the e-rate provisions or if you receive federal funding for computers or connectivity of computers, if you are receiving federal funding in any of those ways, you are required to use the filtering software to make the effort to screen out things that are harmful to minors, most importantly pornography in that. And this became a condition of receiving that federal money, and if you don't put the filters on to protect the children, you're not going to get the federal money.

Dawn: Okay.

Ernest: School systems and libraries are pretty heavy users of federal spending in this way. So, this was a significant qualification on getting their funds.

Dawn: Okay. So, I guess one question is then why does every library and school not have these filters. Why do they not have them?

Ernest: Oh, that's a great question. And let me tell you something about my background that people involved in the webinar may not know.

Dawn: I forgot, one of the most important parts.

Ernest: Yeah. I used to be the chairman of a library system in central Oklahoma.

Dawn: Right.

Ernest: We have a consolidated system that has all the Oklahoma City area and

several other surrounding counties are part of the Metropolitan library system. I served on the board for several years, uh, I was one of the officers and then I was the chairman of the library system for several years. So, I certainly have a familiarity and frankly, a love and appreciation for public libraries. Um, I really admire Andrew Carnegie for what he did [00:06:00] to establish public libraries all across the country.

I think the ability for people no matter what your own education may be, no matter what your financial status may be, the ability to go to a public library and access things where you can learn, you can get ahead, uh, or you can just read for pleasure, if that's what you want, um, it's a great thing to have public libraries that are freely available to people and I would hate to see them go downhill because they no longer became a safe place for someone to take their kids or to send their kids. How many mothers drop off a child or how many fathers for that matter on a Saturday afternoon and say, hey, spend the afternoon at the library. I have wonderful memories of afternoons that I spent at the libraries growing up or sometimes, evenings, uh, at the public library, you know, it just opens up a wonderful world, but you want it to be a safe world for children and to take one of these great environments of our democracy and to taint it by saying, it will no longer be a safe place for kids, because the American Library Association takes the position that you cannot restrict people's access and therefore, sorry, if your kids are seeing things that are totally inappropriate and harmful like that, well, that's just the way it works. That's a pretty poor attitude and having served as the chairman of a library system, I thought it was inconsistent with the purposes of public libraries.

Dawn: Mm-hmm. Um, talking more about the American Library Association and the ACLU, you mentioned that they were very much against this but why, why are they against the Children's Internet Protection Act and against libraries filtering out harmful things like pornography?

Ernest: Sure. Well, a couple of different reasons. One is they make an error in trying to define what actually is censorship. If I say that you cannot publish something and I use the power of government to prevent you even from publishing something, then government is in effect censoring that. It's government action and it's restricting [00:08:00] access through *any* mechanism.

However, if the government says we are going to be selective in what we pay for, just like a library does not buy every book that's published, they do not buy every magazine that's published, they do not subscribe to every online service that's available. They're selective and they should be. They do it for a couple of purposes. One obviously is financial. The other is what is appropriate, just like we have some libraries that are

limited in their scope: maybe a technical library, a geological library, one of many examples.

So, these organizations use a wrongful definition of censorship. They say if you don't *pay* for something, you're censoring it. Well, how backwards is that? Does that mean that every time that I go to a bookstore and I do not buy most of the books that are on the shelf, I have censored them by not buying them? It's a totally absurd argument, but they make it and they try to say that if you don't put certain books on the shelf or if you, uh, don't, uh, purchase them or make them available, somehow you're exercising censorship, so that's the first error, they give a totally warped impression of what censorship is. That's one of their arguments.

The other one is to say, well, our mission is to make everything available to everybody. Tell that to the patrons, to the citizens who pay the taxes for the public libraries. Tell them that the purpose of the public library is to be totally wide open, anything goes, whatever it may be. This is the place you could find anything you wanted to. You don't have to hang out at the, uh, the back magazine corner of a newsstand. You don't have to be surreptitious in what you're trying to do online. Anything goes at the public library. They misdefined the missions of public libraries and they do it in a way that I think most people would totally disagree with, but they couch it in different language so you don't fully understand what they truly mean.

So those are the two things, one, a misapplication of what is actually censorship [00:10:00], and secondly, a misstatement of the mission of public libraries. If you talk to the public and you ask *them* the purpose of public libraries, it would be very different than what you would hear from the ALA or the ACLU.

Dawn: That's interesting. So, I know that the ALA challenged the law.

Ernest: They did.

Dawn: Was it in 2003, 2004? And then the Supreme Court?

Ernest: I think the suit was filed in 2001 in decided in 2003.

Dawn: What happened there?

Ernest: Okay. Well, very quickly, after, uh, we got this language enacted as a part of the appropriations bill, and I want to give some praise to Arizona Senator John McCain

who was helping on the Senate side in getting this through the House Senate Conference Committee on this because there were some people in the Senate that didn't think this belonged on an appropriations bill even though they typically attach all sorts of other things to appropriations bills and Senator McCain was the champion on the Senate side, uh, to help get this accomplished.

Dawn: Okay.

Ernest: So, I want to make sure I get a shout out, a compliment to Senator McCain on that but, uh, then as soon as it got enacted of course, the American Library, uh, Association said we're going to file a suit. They went to a court that they knew was going to be predisposed to be friendly toward them, uh, to get injunctions and to get an original court ruling in their favor. But of course, that was taken up on appeal. I worked with the US Solicitor General's office part of, and the Attorney General's office, uh, in their defense of the constitutionality of this law and it went up to the US Supreme Court which ultimately ruled by a six to three margin, indeed, this is constitutional and in fact they had some excellent language that they utilize in their decision, making it clear that a public library is *not* meant to be a place where you can access absolutely anything and everything.

Libraries should *exercise* responsible judgment in deciding what *is* appropriate to be on library shelf or not, and they certainly dismissed up the argument that somehow this was [00:12:00] censorship because it was a reasonable restriction on the expenditure of public money. So, the language in that decision, uh, is very good. It was very reassuring, uh, to see that the Supreme Court came out in our favor.

Now, if you want to have a look at the website of the American Library Association and read their comments about this, uh, you would almost think that they won the case.

Dawn: Right, yes, yes.

Ernest: They have a *very* misleading and, uh, propagandized account of what happened in this particular lawsuit.

Dawn: That's why we're here right now, because it is hard to figure out really what the truth is, what has happened, what the laws are, because it seems like a lot of libraries that we have worked with, they themselves are totally misled on their rights and ability to filter and, um, because the American Library Association is feeding them stuff like this.

Ernest: Right.

Dawn: Um, it's easy to see it on their website. Uh, are you familiar with the case that was just, um, ruled in Washington State, the Washington State Supreme Court last week [00:13:00]?

Ernest: I have some familiarity with it, yes.

Dawn: I, um, I just want to, one point I've realized, the American Library Association has argued that, um, it's unconstitutional to have people go ask the librarian to take down a filter because they want to view something that is protected. So, say that I'm researching breast cancer, I don't know very much about it, I go to my library and I, and it's filtered, I can't see that? Well, then I'll just go to my librarian and I ask her to take down the filter and tell her why and she'll, she'll do it.

Ernest: Right.

Dawn: Um-

Ernest: And the law makes provisions for that.

Dawn: And the law makes provisions for that, but the ALA, it seems in my understanding, is arguing that that is unconstitutional to have to even ask. Well the Washington State Supreme Court and the US Supreme Court have said that that's not unconstitutional to have to just go ask for the filter to be removed, correct?

Ernest: Exactly right. It's really kind of ridiculous how they say, oh what a burden it is to people to have to go to ask the librarian to remove the filter [00:14:00]. Now, do they think there's some sort of stigma attached to that? If that's the case, why isn't there a stigma attached if somebody is freely accessing pornography through a library computer in full view of the *children* that are using the library? It's really to me, to my way of thinking, some very absurd arguments they make. After all, you know, if you couldn't find something else that you're looking for at the library, is it an improper burden upon you to go to the librarian or the reference desk or the circulation desk and say, I can't find something, will you help me find it? Oh my goodness, what a horrible burden you put on people.

Dawn: Another thing that I realized in all of our, in our efforts to get libraries filtered, is

that a lot of libraries are saying we can only filter the area where the children are. But children are using computers elsewhere in the library and they're walking all around the library and so, is that true, does the law say that it's only the children's section, computers or does it say generally?

Ernest: It says any computer to which minors can have access, oh, which could be in the general section as well as in the children's only section. I mean if you've ever seen a librarian chase a child and say, Ah-ah-ah, you can't use this computer, go over there to the kids section. A lot of kids are, you know, using other portions of the library. When I was young, uh, you know I wasn't just reading things that were in the kids section of the library, I was reading things throughout the library. That's part of the purpose of it. So, it says, you know, if you're making this available where, you know, children could have access or could be seeing it, then you have to apply the filtering software. You know if you want to create some room off, you know, closet it off from every place else, uh, that would be a different case, but that's not the way libraries function.

Dawn: Okay, um, I recently did a search of news articles. I just did it the last six months and I pulled, I put them on an Excel spreadsheet, there were 380, uh, news articles that are talking about patrons accessing pornography in the library and this is happening in big cities, in small rural communities, it's happening everywhere. And as a result, these patrons are [00:16:00] downloading child pornography, they're printing off pornography and leaving it around the library for other children and patrons to see. Um, in some cases, they have viewed pornography and then immediately after, um, taken children to the restroom or some other secluded area in the library and molested and raped them. Um, a lot, a number of librarians have reported that they have been being stalked, harassed, sexually harassed, um, and it's all from patrons who are regularly viewing pornography on the computer. So, this is a huge problem, I mean 380 instances, and that's only what's reported. I looked on Twitter just out of curiosity and I searched the keywords, porn and library and there were 20 just yesterday. Tweets ...

Ernest: Right.

Dawn: ... of people that are like, the guy next to me is looking up porn; I'm at the library. This is a huge problem even though there's a law, so why don't these libraries actually have filters on, how are they getting around?

Ernest: There's often a difference between the librarian that's actually working, the circulation counter and stacks or whatever, and what some library leadership may be doing making decisions. Many librarians complain that if you make pornography freely

accessible, oh, and the behaviors that come with it, you create a hostile work environment. Oh, and, you know, there've been lawsuits brought by them. I don't think the law has become settled, uh, in that area on lawsuits brought by librarians there, but a library is considered, of course, a public place, it's paid for with public money, just as a public park, uh, is a public place, a city hall is a public place, a library is a public place.

So, when it comes to the laws relating to access, to vagrancy or loitering or other behaviors and so forth, the courts have consistently held that it's a public forum in that particular sense, and therefore, therefore, if you have some people that may not be the most attractive citizens, let us say, that want to hang out at the library, well, they have the right there, so, [00:18:00] library, libraries will adopt codes of conduct, you know, whether - it's not just a matter of holding your voice down. You know, no smoking, no eating, uh, no drinking, uh, all the different things you may have there. There's issues sometimes when libraries have homeless people come in with, uh, a great amount of body odor, oh, and so they have to deal with all sorts of problems such as this. But that doesn't mean that you cannot take steps when you can. That's why libraries *do* adopt policies. They *do* adopt codes of conducts to try to make this an environment that is clean, accessible, useful, comfortable, attractive to other people, and that extends of course to what we're talking about here, uh, in the realm of pornography. So, libraries have to make decisions like this all the time. And librarians don't want to be subjected to this kind of behavior, just as parents don't want to see their children to be subjected to, uh, viewing this type of material.

Dawn: Um.

Ernest: And let's remember one thing, whether you're a child or an adult, if you're using a computer, even if you're using innocuous search terms because believe me, the purveyors of pornography put things in their, uh, the mega titles, the meta titles, on that. So, you could be searching for Disneyland and bam, pops, pornography pops up. You don't have to go looking for pornography on the Internet. It comes looking for *you*.

Dawn: Right.

Ernest: All the more reason to have special protection in place when it comes to minors.

Dawn: Right. Um, so some libraries we've seen are not taking this special funding. So, they, by law, don't necessarily have to have the filters in place, at least per the Children's Internet Protection Act, um, but we've seen as you said, they can still take

steps to make sure that the stuff is blocked from their premises.

Ernest: Absolutely.

Dawn: But some are choosing not to. And largely it's because of the misleading information they're receiving from groups like the American Library [00:20:00] Association and the ACLU.

But what can we as citizens do? You said it receives public funds, then can we go [RQ 00:20: 08] argue for filters?

Ernest: Absolutely.

Dawn: Are we in a position to do that?

Ernest: Yes, because by some estimates, a third of public libraries are trying to avoid *federal* funding so that they can avoid the application of CIPA, [set by 00:20:00] the Children's Internet Protection Act. But every public library is getting public funds. They may be from the state government, they may be from local government, they may be from county, it may be a dedicated revenue source that relates to part of the property tax or the sales tax, uh, it may be from city government. The point is, every public library is receiving public funds.

So, if either the library board makes a decision on their own, we're going to use this filtering software because they have a constitutional right to do so, it's clearly established by the court case, the Supreme Court case we were discussing, *or* if the public body that provides funding puts restrictions on that funding, whether it comes from the state legislature, the city council, county commissioners, whatever entity it may be, they have the ability to create what is basically a state or local version of the Children's Internet Protection Act and condition the receipt of that federal, I'm sorry, of that local or state money, condition the receipt on utilizing this filtering software.

Dawn: I just want to highlight that recently this happened in Arizona, um, a couple of groups that we actually work with, um, and a few of our other, uh, anti-pornography efforts, they led efforts in Arizona and most of these people are just parents who are concerned, they have fulltime jobs and then did this on the side, but they went to the state legislature in Arizona and they got a bill passed very similar to the Children's Internet Protection Act ...

Ernest: Right.

Dawn: ... but on a state level. It stipulates that, yes, every computer that a child might possibly see or use has to be filtered, and if they receive any funding, which almost all of them receive state funding, then they have to have this.

Ernest: Exactly. And see [00:22:00], we provided the model. We provided the model through the federal legislation. That has been *explicitly approved* by the US Supreme Court. So what you do is you take this model and you just put it in through local law or through state law to govern the libraries that *they* fund. Uh, so, the process in that way is pretty simple.

What you have to watch out for is that, oh, the American Library Association and others will try to pull you back away from that and say, oh, it's not necessary, or, would you give this little loophole. For example, one of the little tricks they use is to say, well you have to use a filtering software *or* you have to have what they call an "acceptable use policy," ...

Dawn: Right.

Ernest: ... which is just a series of standards that they may or may not follow that frankly have no teeth to them. Okay. So they try to carve out big loopholes from the protections that are created by the Children's Internet Protection Act or that might be created by a state version or a local version of this law.

So you have to watch out for people that are trying to say oh yes, we're on your side, but don't you think this is a little bit too strong and too severe and why don't we create some exception over here or water it down there. That's what you have to watch out for, because they employ professional lobbyists, they employ attorneys, they have people that go around and talk to lawmakers all the time and develop relationships with them and they will try to pull them away from any citizen-sponsored effort to create this protection for children.

Dawn: So, as citizens, we need to be aware that this is happening and likely will happen if you're able to take action here and, but there's stuff we can do to combat this and I want to highlight a couple other, um, kind of grassroots efforts that are happening around the country.

Um, just last year, a group of citizens, concerned parents, got together in Jefferson

County, Colorado, and, because there was no anti-porn policy there and no [00:24:00] filters, they saw that children were viewing pornography there and they were fed up with that. So then, as parents, they went to the library board meetings and their city council meetings and then they talked to them and insisted that something be done, and after just two months of this, the library board passed a no porn policy and installed filters, so, it's easy to do this.

We're looking for people who can just take charge in your community, um, to help make sure that these laws, that filters are installed, that the laws are being followed, let us know. We've got this getting started packet we put together with the help of many other people who have been involved in this for *years*, um, to help give you the tools to make sure that your area is safe. You can go to Safeschoolssafelibraries.com to learn more information about this. You can e-mail me at grassroots@pornharms.com and we'll be happy to send you more information.

Uh, we're really grateful for your time ...

Ernest: Sure.

Dawn: ... and all your knowledge and all your hard work ...

Ernest: Sure.

Dawn: ... in this over the years.

Ernest: And one final thing that people working on this issue hopefully, hopefully will remember. If a library adopts a policy to protect children such as through the Internet filter, that's good, but a policy could be changed. It might be changed by a new library director. It might be changed by a new library board. That does not have the same strength as a local *law* requiring this to be done as a condition of receiving the money or a *state law* as a condition of receiving state funding. So even though the policies are good, they are *not* as long lasting as actually putting this protection in law as a restriction on how they use public money.

Dawn: That is a good point and thank you ...

Ernest: You bet.

Dawn: ... for bringing it up. That's what ultimately we want and you can be the local

hero in your area and make sure that there are strong laws on local levels, state levels and even the policy levels too and we want to help you with that.

We just have two minutes, I think. Maybe if there are any questions, you can send, you can chat below and Tammy here in the room with us will read them to us. Do [00:26:00] you have any now, Tammy?

Tammy: I have one. Who makes sure that the libraries that receive funding have filters? Is there a watchdog group or something of that nature?

Ernest: There's a certification requirement that involves a Federal Communications Commission on the federal level. Oh, but, I'll tell you, there is *no* watchdog that's ever as vigilant as everyday citizens who get involved in this because sometimes government watchdogs don't do what they're supposed to do.

Dawn: Right.

Tammy: And then we have one more. Given that answer, what do you think could be done to educate communities about the laws that the ALA are putting out versus what the actual law is?

Ernest: Sure. Well, I think that's what Morality in Media is seeking to do with the packet that Dawn has here. I looked at that. It's got a lot of great material in there. So, that's the way you have to do it. You turn to a trusted source. Uh, Dan Kleinman's group with Safelibraries.org is also excellent. So, you have to turn to these trusted sources.

Dawn: We'll try to help everyone who's looking for more information.

So, just one more time, websites to check out are Safelibraries.org. They have been around for a very long time in trying to educate people about the harms and dangers of libraries. Um, they have a lot of good material and they don't only deal with the issue of pornography in libraries but other dangers as well.

And then, there's our website which is Safeschoolssafelibraries.com and one last question? Anymore? Okay.

Ernest: Okay.

Dawn: Thank you everyone and again, e-mail me if you want more information, grassroots@pornharms.com. Thank you for your time.

Ernest: Thanks Dawn.

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Speakers:

- **Dawn** = Dawn Hawkins, Morality in Media and PornographyHarms
- **Ernest** = Ernest Istook, author of the Children Internet Protection Act
- **Tammy** = Webinar facilitator for Dawn Hawkins

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