

Mr. Morales the information we discussed is presented below. Thank you so much:

OFFICE OF CHIEF OF STAFF AND UNIVERSITY COUNSEL

*Privileged, Attorney-Client Communication
Do not disclose*

I write in response to the request I received this morning for a legal opinion concerning whether Tennessee State University can filter Internet content viewed over the University's network without violating the 1st Amendment to the United States Constitution. Based upon my research and the current state of the law and technology, the answer is yes.

Background:

My understanding is as follows: at the request of Student Affairs, CIT blocked a commercial Internet website called "juicy.com" or "juicyUniversity.com" or the like. Members of the local media have asked whether Tennessee State University can block or filter a website without violating the 1st Amendment. The answer is twofold.

First, students can use cell phones, Blackberries, I-phones and other personal electronic devices to access this website. They don't need our network. There may have been a time when students did not have access to the Internet outside of computers, but those days are long gone. Students have a variety of means of accessing internet sites,

including wireless network access through Cricket, AT&T, Comcast, and an endless number of other providers, and through cell phones, blackberries, and other electronic devices. No computer is necessary.

Second, the University's computer network/Internet access is funded through State-appropriated funds and student enrollment fees for specific, limited purposes that are set forth in policy. For students, Internet access is provided for academic purposes and paid for, in part, by a student enrollment fee called a "Technology Access Fee." The technology access fee, also called the "TAF" fee, is paid by all TSU students as part of their enrollment fees to support a portion of the technology resources used by students. This fee pays for student technology needs associated with curriculum support and necessary infrastructure to provide the academic computing labs and network environment. <http://www.tnstate.edu/interior.asp?mid=3976>. It supports academic use. Several references to this fee and the network make it clear that it is intended to support academic and curricular functions (e.g., <http://www.tnstate.edu/interior.asp?mid=4705> (Academic Experience) <http://www.tnstate.edu/interior.asp?mid=4707> (Services and Fees)).

With respect to the state-funded portion, the University provides students and staff with access to computer systems and facilities for academic and administrative purposes. For students, Internet access is provided to facilitate research and learning. For employees, it is provided for academic and administrative purposes. The University can limit the use for which this resource is provided because, legally, our computer network is not a public forum as, according to the

U.S. Supreme Court, a public entity's provision of internet access does not create a public forum. See *United States v. American Library Association*, 539 U.S. 194 (2003). Instead the following legal principles apply:

0. A public entity's provision of internet access does not create a traditional or designated public forum. See *United States v. American Library Association*, 539 U.S. 194 (2003).
0. According to the U.S. Supreme Court, it does not violate the First Amendment for a publicly-funded entity to block or "filter" an Internet site. *United States v. American Library Association*, 539 U.S. 194 (2003).
0. According to this U.S. Supreme Court decision, TSU's computer network is a private forum.
0. According to the U.S. Supreme Court , and as stated in *United States v. American Library Association*, 539 U.S. 194 (2003), a public library's use of Internet filtering software does not violate their patrons' First Amendment rights. The same applies to TSU: a decision to filter an Internet site does not violate the First Amendment.
0. To quote the U.S. Supreme Court, a publicly-funded entity that "filters" an internet site "is not denying a benefit to anyone, but is instead simply insisting that public funds be spent for the purpose for which they are authorized: helping . . . [to] fulfill the traditional role of obtaining material of requisite and appropriate quality for educational and informational purposes." *United States*

v. American Library Association, 539 U.S. 194 (2003).

Compelled funding of expression:

The remaining legal issue is whether our students' 1st Amendment protection against being compelled to fund another private speaker's offensive or objectionable message is implicated. This protection is implicated when a government-compelled payment, such as a student fee, is used to fund a traditional or designated public forum and that forum is used by objectionable or offensive speakers. It is generally described as the right against compelled funding of expression. IF Tennessee State University's computer network were a traditional or designated public forum, it would be necessary to evaluate whether use of student enrollment fees (TAF fees) to fund it violates the 1st Amendment because it provides a vehicle for objectionable or offensive speech. However, according to the model provided by the United States Supreme Court, other Tennessee State University is a publicly funded entity and its computer network is paid, in part, by State funds, it is neither a traditional public forum nor a designated public forum. As such, compelled expression analysis does not apply, and there is no need to determine whether students are compelled to fund any actual objectionable speech or speaker.

Conclusion:

Because the United States Supreme Court has rejected the argument that a public entity creates a public forum by providing Internet access, it is clear Tennessee State University's computer network is not a public forum. As

such, the University can both designate its approved uses (which TSU does through technology access fee policy, electronic use policy, and student disciplinary rules) and filter Internet sites.