limit their freedom of speech if they accept federal funds? The plurality found that, assuming that government entities have First Amendment rights (it did not decide the question), "CIPA does not 'penalize' libraries that choose not to install such software, or deny them the right to provide their patrons with unfiltered Internet access. Rather, CIPA simply reflects Congress's decision not to subsidize their doing so." [1386]

The government may also take notice of objective conditions attributable to the commercialization of sexually explicit but nonobscene materials. Thus, the Court recognized a municipality's authority to zone land to prevent deterioration of urban areas, upholding an ordinance providing that "adult theaters" showing motion pictures that depicted "specified sexual activities" or "specified anatomical areas" could not be located within 100 feet of any two other establishments included within the ordinance or within 500 feet of a residential area.[1387] Similarly, an adult bookstore was subject to closure as a public nuisance where it was being used as a place for prostitution and illegal sexual activities, because the closure "was directed at unlawful conduct having nothing to do with books or other expressive activity." [1388] However, a city was held constitutionally powerless to prohibit drive-in motion picture theaters from showing films containing nudity where the screen is visible from a public street or place.[1389] Also, the FCC was unable to justify a ban on transmission of "indecent" but not obscene telephone messages.[1390]

The Court has held, however, that "live" productions containing nudity may be regulated to a greater extent than may films or pub-

---

[1386] 539 U.S. at 212.

[1387] Young v. American Mini Theatres, 427 U.S. 50 (1976). Four of the five majority Justices thought the speech involved deserved less First Amendment protection than other expression, id. at 63–71, while Justice Powell, concurring, thought the ordinance was sustainable as a measure that served valid governmental interests and only incidentally affected expression. Id. at 73. Justices Stewart, Brennan, Marshall, and Blackmun dissented. Id. at 84, 88. *Young* was followed in City of Renton v. Playtime Theatres, 475 U.S. 41 (1986), upholding a city ordinance prohibiting location of adult theaters within 1,000 feet of residential areas, churches, or parks, and within one mile of any school. Rejecting the claim that the ordinance regulated content of speech, the Court indicated that such time, place and manner regulations are valid if "designed to serve a substantial governmental interest" and if "allow-[ing] for reasonable alternative avenues of communication." Id. at 50. The city had a substantial interest in regulating the "undesirable secondary effects" of such businesses. And, although the suitability for adult theaters of the remaining 520 acres within the city was disputed, the Court held that the theaters "must fend for themselves in the real estate market," and are entitled only to "a reasonable opportunity to open and operate." Id. at 54. The Supreme Court also upheld zoning of sexually oriented businesses in FW/PBS, Inc. v. Dallas, 493 U.S. 215 (1990), and City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002).

[1388] Arcara v. Cloud Books, 478 U.S. 697, 707 (1986).

[1389] Erznoznik v. City of Jacksonville, 422 U.S. 204 (1975).

[1390] Sable Communications of California v. FCC, 492 U.S. 115 (1989).