Internet Filtering: CIPA Compliance

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Our objectives

▶ Describe the basic requirements of the Children's Internet Protection Act (CIPA)

▶ Identify some of the legal issues related to filtering internet access for CIPA compliance

▶ Increase confidence in handling patrons request to unblock webpages

Disclaimer

Lawyer

Not a Lawyer

Need legal advice?
Talk to your library's attorney.

Protecting Kids Online: A Rundown

Law	Description	Constitutional?
Communications Decency Act (CDA) - 1996	Filtering tied to federal funds. Part of the Telecommunications Act of 1996, which created E-rate.	No - 1997
Child Online Protection Act (COPA) - 1998	Filtering tied to federal funds. Never went into effect due to 3 lawsuits over constitutionality	No - 2009
Children's Online Privacy Protection Act (COPPA) - 2000	Regulates how commercial websites collect personal information from children under the age of 13. Doesn't apply to government entities such as libraries.	Yes
Children's Internet Protect Act (CIPA) - 2000	Filtering tied to federal funds. ALA's lawsuit went to Supreme Court.	Yes, when applied correctly - 2003

Children's Internet Protection Act

"The Children's Internet Protection Act (CIPA) is a federal law enacted by Congress [in 2000] to address concerns about access to offensive content over the Internet on school and library computers."

www.fcc.gov/guides/childrens-internet-protection-act

NCIPA – A Quick Note

- The **Neighborhood Children's Internet Protection Act (NCIPA)** was passed into law at the same time as CIPA.
  - CIPA addresses what needs to be filtered and the requirement to have an Internet Safety Policy.
  - NCIPA specifies what has to be included in the Internet Safety Policy.
  - **NCIPA applies only to E-rate & the Emergency Connectivity Fund**, not LSTA or other funding passing through the Institute of Museum and Library Services.

This presentation covers CIPA/NCIPA compliance for public libraries receiving E-rate or other federal funds. Schools have additional CIPA requirements.

Why does CIPA matter?

- FCC programs
  - E-rate
  - Emergency Connectivity Fund
- Institute of Museum and Library Services programs
  - Library Services and Technology Act (LSTA)
  - Coronavirus Aid, Relief, and Economic Security Act (CARES)
  - American Rescue Plan Act (ARPA)

Does my library have to comply with CIPA for FCC funding?

- **Funding through the FCC:**

  - E-rate – libraries applying for discounts on Internet Access (Category One) or any Category Two services (Internal Connections, Basic Maintenance of Internal Connections, or Managed Internal Broadband Services)

    - Exempt: Applying <u>only</u> for telecommunications service such as data transmission between library branches

  - Emergency Connectivity Fund – libraries applying for discounts on internet access (including hotspot service) and laptops/tablets

    - Exempt: Purchasing only hotspot hardware or laptops but not internet access supported by E-rate or ECF

Does my library have to comply with CIPA for IMLS funding?

- **Funding that passes through the Institute of Museum and Library Services:**

  - Library Services and Technology Act (LSTA)

  - Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

  - American Rescue Plan Act (ARPA)

- **CIPA required for funds to purchase:**

  - Internet access, including hotspot service

    - Exempt: purchasing hotspot hardware only without cellular data plan

  - Computers – desktops, laptops, tablets

3 Steps to CIPA Compliance

Technology Protection Measure

Internet Safety Policy

Notice & Public Meeting

What the filter must block

▶ This technology must block or filter Internet access to **visual depictions** that are classified as:

    ▶ Obscene

    ▶ Child Pornography

    ▶ Harmful to minors (this requirement applies to those under the age of 17 only)

▶ Does <u>not</u> apply to text or audio
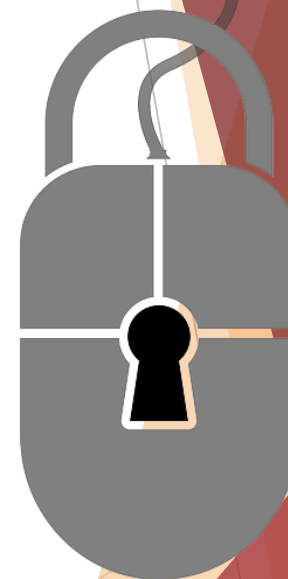
Legal Definitions for CIPA

▶ Obscenity

  ▶ [18 U.S.C. § 1460](#)

  ▶ Miller Obscenity Test (AKA '3 prong standard')– "average person applying contemporary community standards" must find that the image:

    ▶ appeals to the prurient interest;

    ▶ is patently offensive; and

    ▶ has no literary, scientific, artistic, or political value whatsoever.

▶ Child Pornography

  ▶ [18 U.S.C. § 2256](#)

  ▶ Any visual depiction (including computer-generated) that appears to be a minor engaging in sexual conduct.

▶ Harmful to Minors (under 17)

  ▶ [18 U.S.C. § 2246](#)

  ▶ Legally, only sexual material is harmful to minors.

  ▶ Does not include graphic violence, hate speech, drug use, etc.

More on Legal Definitions

▶ Access to child pornography, obscenity, and material harmful to minors (access <u>by</u> minors, does not apply to adults) has <u>never been protected</u> by the First Amendment.

> ▶ **No one has the right to view child pornography or obscene material in your library.**

▶ The legal definitions of these terms are **very narrow** and rarely correspond to the categories used by companies providing content filtering.

> ▶ Most filters will undoubtedly block more content than is required by CIPA.

Common Misconceptions about CIPA

CIPA does <u>NOT</u> require:

▶ Monitoring or tracking of individual patrons.

▶ Any library or other agency to certify the effectiveness of filtering software.

▶ A specific set of procedures to unblock the filter.

▶ Filtering of categories other than child pornography, obscenity, and material harmful to minors.

▶ Blocking social media sites like YouTube or Facebook

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Which computers to filter?

- All computers with internet access (desktops, laptops, tablets) owned by the library must be filtered.
  - This includes staff computers that may not ordinarily be visible to minors.
  - Some libraries employ staff and volunteers younger than 17.
  - If library-owned computers use the library's Wi-Fi, filtering software must be installed on the computer or Wi-Fi must be filtered.

- CIPA does **<u>not</u>** require filtering of patron-owned computers.

Implementing Filtering

▶ Filtering can be implemented:

  ▶ at the server level on the library's local area network (LAN) or wide area network (WAN) – example: firewall with a content filtering license

  ▶ through software installed on individual computers

  ▶ by an Internet Service Provider, including cellular carriers

How is content filtered?

▶ Content filters usually involve several methods for blocking undesired content, including:

  ▶ Blocking specific URLs or domains

  ▶ Dynamic content filtering based on keywords or phrases, ad placement, and link analysis

  ▶ Blocking certain file types (audio, image, or executable files)

  ▶ In combination with security or firewall features, blocking viruses and malware

Disabling the Filter

The filter can be lifted or sites can be whitelisted for patrons age 17 or older.

- The original language (2000) specifies that the library may disable the protection measure for "research or other lawful purposes".
- During arguments before the Supreme Court in 2003, the Solicitor General confirmed that a patron would not have to state why they asked for a site to be unblocked.

Allowing the filter to be disabled was a critical element in CIPA's being declared constitutional by the Supreme Court in 2003.

- Failing to lift the filter or unblock sites could open your library to "as-applied" legal challenges

Best Practices

- ▶ Filtering the minimal amount required by law

- ▶ Selecting filtering software with greater flexibility in adjusting options + ease of disabling the filter

- ▶ Educating staff on legal requirement to unblock sites for adult patrons

- ▶ Making patrons aware that you filter and how to handle requests to unblock content

The Limits of Filtering

▶ The law does not mandate that the filter works perfectly.

  ▶ Libraries must make a good faith effort to block visual depictions of obscenity, child pornography, and material harmful to minors on library computers.

  ▶ No person or agency can guarantee the effectiveness of any filter.

▶ Decisions about which filter to implement, unblocking procedures, and whether or not to filter Wi-Fi are made at the local level.

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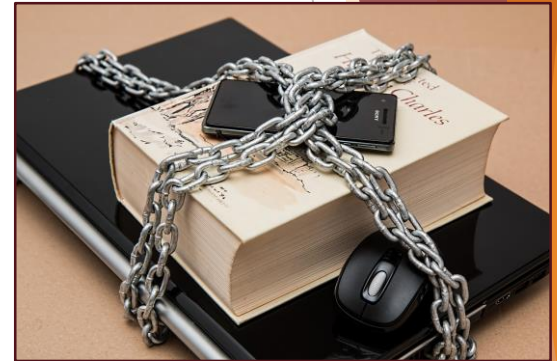
Security Concerns

▶ "The Man in the Middle: E-rate, Filtering, and Cyber-Security" webinar was presented by American Libraries Live in September 2016. The recording is no longer available, but you can view and download the slides: https://www.slideshare.net/ALATechSource/al-live-filtering-the-man-in-the-middle

  ▶ Michael Robinson, Chair of the ALA's Intellectual Freedom Privacy Subcommittee, described security concerns about the way some filters affect pages encrypted with HTTPS. When filters have SSL decryption enabled, they can monitor, inspect, and log content from a supposedly secure website.

  ▶ James LaRue, Director of the ALA Office for Intellectual Freedom, posted a summary of the presentation: http://knowledgequest.aasl.org/man-middle-e-rate-filtering-cybersecurity/

Filtering Resources

- **Webjunction Understanding Content Filtering FAQ**
  - http://www.webjunction.org/documents/webjunction/Understanding_Content_Filtering_An_FAQ_for_Nonprofits.html/

- **ALA's Filters and Filtering page arguing in favor of intellectual freedom**
  - http://www.ala.org/advocacy/intfreedom/filtering

- **Spiceworks Content Filtering Web Forum**
  - https://community.spiceworks.com/security/web-content-filtering

Internet Safety Policy

5 required elements

1. Access by minors to inappropriate matter on the Internet;
2. Safety and security of minors when using email, chat rooms, and other forms of direct electronic communications;
3. Unauthorized access, including hacking, and other unlawful activities by minors online;
4. Unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and
5. Measures designed to restrict minors' access to materials that may be harmful to minors.

Bonus The Technology Protection Measure (filter) should also be incorporated, as well as how patrons 17 and over can request that filtering be disabled.

Policy Best Practices

▶ Wording

- ▶ Avoid First Amendment legal challenges by sticking closely to what is required by CIPA.

- ▶ For example, the word "obscene" has a legal definition, while the word "explicit" does not.

▶ Consult a lawyer, if possible!

- ▶ If not, model your policy on a pre-existing one.

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Example Internet Policies

- KDLA Sample Internet Use Policy
  - https://kdla.ky.gov/librarians/librarypolicies/Pages/default.aspx
  - See Library Operations Policy section
  - Sample #2 includes the 5 required elements.
  - Contact KDLA Technology Consultant for a more recent sample policy.
- E-rate Central's guide includes a basic sample policy.
  - https://e-ratecentral.com/Resources/Educational-Information/CIPA
- Nashville Public Library's Internet Safety Policy
  - https://library.nashville.org/about/policies/internet-safety-policy

Public Meeting

▶ "A library…shall provide **reasonable public notice** and hold at least one public hearing or meeting to address the proposed Internet safety policy."

   ▶ 47 U.S.C. § 254 (h)(6)(A)(iii)

▶ The meeting must follow the guidelines of the Kentucky Open Meetings Act.

   ▶ KRS 61.800-61.850

   ▶ For special-called board meetings, a sign must be posted in the building 24 hours beforehand

▶ The notice to the public must also comply with state law.

   ▶ KRS 424.130 (1)(d), KRS 424.120

Public Meeting, continued

▶ This meeting may be held as part of a regular library board meeting as long as:

  ▶ the agenda is advertised; and

  ▶ the opportunity for public comment is allowed.

▶ This is an opportunity to explain why this policy is being adopted, how it will help protect children using the library's internet, and how it will benefit taxpayers.

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Sample Public Meeting Notice

▶ **Some Kentucky libraries have used the following language to give notice in the local newspaper that the meeting for public comment on the Internet Safety Policy will take place during a board meeting:**

Notice of Public Hearing regarding proposed changes and updates to the LIBRARY NAME Internet Safety Policy, including provisions to meet the requirement of the Children's Internet Protection Act (CIPA).

Notice is hereby given that on DATE at TIME as part of the regularly scheduled meeting of the LIBRARY NAME Board of Trustees at LIBRARY ADDRESS, the board will hold a public hearing in order to receive opinions regarding an updated and revised Internet Safety Policy. Upon conclusion of the hearing, the board will consider adoption of the revised policy, which would include the continuation of technology protection measures as required by the Children's Internet Protection Act. A copy of the proposed policy is available for review in the Library office at the above address, questions and comments may be directed to NAME, Library Director.

Compliance – E-rate/ECF

- 1st Year of compliance
  - 1st funding year after CIPA effective date (April 20, 2001) that the library applied for services other than telecommunications **AND** filed a Form 486.
  - The library doesn't have to be compliant but must document steps to becoming compliant.
  - Check the E-rate Central website to determine when a Form 486 was last filed for your library (enter your BEN):

    http://www.e-ratecentral.com/us/stateInformation.asp?state=KY

- 2nd Year and subsequent years
  - Must be compliant if applying for E-rate/ECF again.

Documentation of Compliance

▶ Internet Safety Policy

  ▶ Copy of current policy

  ▶ Resolution to adopt policy

▶ Technology Protection Measure (filter)

  ▶ Maintenance logs, filtering logs, proof of purchase, procurement paperwork, etc.

▶ Public Hearing

  ▶ Advertisement for public notice, meeting agenda

▶ See USAC website for more information on document retention: https://www.usac.org/e-rate/applicant-process/starting-services/cipa/

Wrapping Up

How can libraries balance intellectual freedom, children's online safety, and budgetary concerns?

The Take-Away

- Can you answer the following questions?

    - Does your library need to comply with CIPA due to E-rate (or LSTA) funding?

    - If your library must comply with CIPA, does it filter internet access on all library-owned computers?

    - Do you and other library staff know how to disable the filter for patrons (or staff) age 17 and older who request unfiltered internet access for lawful purposes?

    Can't answer these questions? Investigate!

General CIPA Resources

- **FCC Consumer Guide for Children's Internet Protection Act**
  - https://www.fcc.gov/file/15349/download
- **E-rate Central's checklist for CIPA compliance**
  - https://e-ratecentral.com/Portals/0/DocFiles/files/cipa/cipa_checklist.pdf
- **American Library Association FAQ and legal history**
  - http://www.ala.org/advocacy/advleg/federallegislation/cipa/
- **Wisconsin Department of Public Instruction CIPA: A Brief FAQ on Public Library Compliance**
  - https://dpi.wi.gov/sites/default/files/imce/pld/pdf/cipafaqlite.pdf
- **American Library Association guidance for CARES Act**
  - https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/libfunding/07022020%20CIPA%20and%20IMLS%20CARES%20Act%20Funds%20-%20FINAL.pdf

CIPA Resources for Emergency Connectivity Fund

- **American Library Association ECF CIPA Scenarios**
  - https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/broadband/CIPA%20Compliance%20Scenarios%20in%20ECF_final_6.8.21.pdf
- **FCC FAQs for the Emergency Connectivity Fund**
  - https://www.fcc.gov/emergency-connectivity-fund-faqs
- **FCC CIPA flowchart for the Emergency Connectivity Fund**
  - https://www.fcc.gov/sites/default/files/cipa_chart_2.jpg

Keep talking!

For Public Library Technology Support Staff:

- KYTECH is a discussion list devoted to those who work with technology for their library. By using this LISTSERV®, individuals from around the state will have the chance to ask questions, share ideas, voice concerns, and make valuable contacts all through their e-mail.
  - TO SUBSCRIBE: Send a blank message to: join-kytech@listserv.ky.gov

- See the **KDLA website** for more information on our many listservs – for youth services, adult services, bookmobile/outreach, & more!
  - http://kdla.ky.gov/librarians/staffdevelopment/Pages/listservs.aspx

Thanks for watching!

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Please complete KDLA's survey to help us with federal reporting:
https://www.surveymonkey.com/r/XJZ3LVT

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