

Ohio Library Council
Children's Internet Protection Act (CIPA)
FREQUENTLY-ASKED QUESTIONS

Q. What does the Supreme Court decision mean?

- A. The Children's Internet Protection Act (CIPA) requires those libraries that obtain federally funded E-rate and Library Services and Technology Act (LSTA) assistance for Internet access, Internet service, internal connections, to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet, to block images that constitute obscenity, child pornography, and to prevent minors from obtaining access to material that is harmful to them. On June 23, the Supreme Court of the United States upheld the constitutionality of the CIPA thereby allowing Congress to mandate the filtering of visual image Internet content by libraries as a condition of receiving this funding. The Supreme Court's decision in *ALA II* has brought some clarity to the issue of Internet filtering. Six Justices embraced the notion that Congress can condition the receipt of federal funds for Internet purposes on a library providing an Internet safety policy that includes filtering of visual depictions, provided that the filter can be removed without significant delay at the request of an adult patron.

Q. When must a library disable or turn off the filter?

- A. The filter must be removed or the site unblocked upon the request of an adult patron "without significant delay." Unfortunately, the Court did not define this phrase. As a result, some commentators believe that the Supreme Court has paved the way for individual libraries to be the defendant in the next wave of lawsuits regarding whether the amount of time a library takes to remove the filter or unblock the site constitutes a significant delay. Similarly, libraries will need to carefully consider the manner in which a patron must make such a request – and run the risk that the manner selected will be challenged as too high a burden on a patron's First Amendment rights. The *ALA II* decision provides little guidance on these questions and the answer will not be known until the first case is decided. But, unfortunately, the unconstitutionality of CIPA itself would not likely be in question.

Q. Does a library that does not receive e-rate discounts or LSTA funds have an obligation to filter?

- A. No. The requirements established in CIPA, and upheld by the Supreme Court, only impact public libraries that receive e-rate discounts or LSTA money for internet access, Internet service, internal connections, to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet. Libraries that receive e-rate for other telecom expenses or LSTA for projects or programs that are NOT internet related, may still pursue those funds without the obligation to filter.

Q. How does the statute define "minor"?

- A. CIPA defines a minor as any person less than 17 years of age.

Q. Must a library subject to CIPA filter staff terminals?

- A. Yes. All library computers, including staff computers, must have a technology protection measure blocking obscene/child pornography images installed and running. Note, however,

that libraries can authorize adult staff (older than 17) to turn off the software first thing each morning and leave it off until the end of the day without violating the CIPA requirements.

Q. Does CIPA mandate the use of a particular blocking software or filtering settings?

A. No

Q. Can libraries receive any federal assistance to purchase filtering software?

A. No. Or at least not under CIPA.

Q. Does CIPA, or the Supreme Court ruling involve just images, or do we need to take steps to block or filter text as well?

A. CIPA and the Supreme Court ruling involve visual depictions only.

Q. What kind of visual depictions must be blocked or filtered?

A. The filter must protect against access to visual depictions that are:

1. Obscene, as defined in section 1460 of title 18, US Code.
2. Child pornography, as defined in section 2256 of title 18, US Code.
3. Harmful to minors, as defined in CIPA and means any picture, image, graphic image file, or other visual depiction that, with respect to minors:
 - i. Taken as a whole, appeals to a prurient interest in nudity, sex, or excretion;
 - ii. Depicts, describes, or represents, in a patently offensive way, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
 - iii. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Q. Can the regularly scheduled library board of trustees meeting be used as the required public meeting for CIPA compliance?

A. Yes.

Q. Must libraries certify compliance with CIPA this year?

A. In order to receive LSTA Program Year 2004 funds (which begins October 1, 2004) from the State Library, a public library must certify that it is either in compliance with CIPA's Internet safety requirements or undertaking efforts to comply by the following year. Remember, for LSTA purposes compliance only applies to grants to purchase computers to access the Internet or to pay for the direct costs associated with accessing the Internet, not to grants for any other purpose.

The E-rate program requires that libraries receiving E-rate discounts for Internet Services be fully compliant on July 1, 2004, the beginning of Funding Year 2004.

Q. What kind of certification is required?

A. Three agencies – FCC, Department of Education and IMLS all have responsibilities under this new law.

Q. Will my library need to make multiple certifications to multiple agencies?

- A. The FCC has rule-making authority for the E-rate program. They require that libraries receiving funds for Internet Services certify that they are CIPA compliant on FCC Form 486, "Receipt of Service Confirmation Form" and/or on FCC Form 479, "Certification by Administrative Authority of Compliance." Form 486 is sent directly to the Schools and Libraries Division of USAC (SLD) which administers the program. Form 479 is sent by participants to a consortia, such as OPLIN, that applies for discounts on services received by the participants. Libraries that receive funds for Telecommunications Services (such as 56K or T1 lines or voice telephone) or for Internal Wiring do not have to certify and do not have to file Form 486. However, OPLIN requires all libraries to return Form 479 and check either that they are compliant or that they receive Telecommunications only.

Q. IMLS has rule-making authority for LSTA grants. The State Library of Ohio provides a form for certification in that case. Libraries that certify CIPA compliance for E-rate do *not* have to certify again to receive an LSTA grant.

- A. We know of no circumstance in which a public library would certify to Department of Education. See "How to Certify Compliance" from the OLC ad hoc committee on CIPA.

Q. Which technology protection products are CIPA compliant?

- A. The definition within the law is very broad. It simply states that the term "technology protection measure" means a specific technology that blocks or filters access to material that is obscene, child pornography or harmful to minors.

Products of any kind that can provide that functionality can be assumed to be CIPA compliant.

Q. Are there blocking or filtering products available that actually block access to obscenity, child pornography and material harmful to juveniles without also restricting access to constitutionally protected speech?

- A. No. No product is that precise. Studies by such diverse groups as the European Union, the Australian Broadcast Authority, the National Academy of Science, and Consumer Reports have generally found error rates of 15-20% in commercially available filtering products.

Q. What happens when the filter fails?

- A. Libraries must be prepared to remove improper blocks to allow access to protected speech. Libraries must be prepared to step up to individuals who seek access to obscenity, child pornography or material harmful to juveniles under the general provisions of their public access policy. Technology Protection Measures can be only one facet of an overall public access management plan.

Libraries that do use filters are considered to be making "best effort" and will not be held liable for the product failure.

Q. Is there any sort of filter effectiveness certification?

- A. No. There have been studies comparing various products but there is no generally agreed up standard of effectiveness.