

RISK MANAGEMENT BULLETIN

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Children's Internet Protection Act (CIPA) - Library Compliance

The Children's Internet Protection Act (CIPA) is a federal law enacted by Congress in December 2000 to address concerns about access to offensive content over the Internet on library computers. CIPA imposes certain types of requirements on any library that receives funding support for Internet access or internal connections from:

- **Universal Service support program (E-rate):** CIPA applies to any library that receives discounts for Internet access or for internal connections costs. Compliance is not needed for discounts on telecommunication costs, including voice or data circuits.
- Grants distributed under the **Library Services and Technology Act (LSTA):** CIPA applies when using LSTA funds to purchase computers used to access the Internet or to pay for direct costs associated with accessing the Internet. Compliance is not needed for other uses of LSTA funds

The following is a brief summary of CIPA. It focuses on compliance with CIPA in light of the Supreme Court's June 2003 ruling that the filtering language in CIPA was constitutional for public libraries.

- **What has to be filtered or subject to the "technology protection measure" (TPM)?**

The filter, referred to in CIPA as a "technology protection measure" (TPM), must protect against access to visual depictions that (1) are obscene, (2) contain child pornography, or (3) are harmful to minors. CIPA does not require the filtering of text or audio.

- **What computers must have the Internet TPM?**

The law states that a library must have a TPM in place with respect to any of its computers with Internet access. This includes staff and patron computers accessed by minors or adults. Even Internet-connected computers located in administrative areas not accessible to the public must still have TPMs.

- **Under what circumstances or conditions can a TPM be disabled?**

The law states that any authorized staff may disable the TPM to allow Internet access for lawful purposes. In the E-rate section of CIPA the disabling provision applies only to adults (age 17 or older), but the LSTA section allows anyone to request that the TPM be disabled. Under the E-rate provisions, since authorized staff can disable the TPM for adults, it should be easy to develop a policy to allow adult staff to turn off the TPM for

their own use. The disabling process should be a key part of any filter evaluation. All libraries should make a good faith effort to enforce a policy that only adults can select the unfiltered option and use the unfiltered PCs. Examples of further safeguards could include signage indicating “adult only” workstations, and the library have the patron sign a form which states that he/she wants unfiltered access.

- **How effective does the TPM have to be?**

The law states that the Internet TPM must *protect* against visual depictions outlawed by the legislation. No TPM is 100% effective in *preventing* all such access.

- **What are the legal implications if the TPM fails?**

The FCC presumes that Congress did not intend to penalize libraries that act in good faith and in a reasonable manner to implement TPM. A library *must have* policies and procedures in place to address any complaints expeditiously. It is still possible that a patron could claim that too many allegedly illegal images are getting through the TPM and file a complaint directly with the FCC. Under CIPA, the FCC can require a library to reimburse its E-rate discounts for any period of time it was out of compliance.

- **Does it make any difference where the filtering takes place?**

It makes no difference where the filtering is done. It can be done centrally by an Internet Service Provider, or at the server level on the library’s LAN or WAN, or the filter can be individually installed on each workstation. Filter installation on each PC is practical only when the number of workstations is quite small.

Risk Exposure

Public libraries not in compliance with CIPA mandates should obtain the assistance of an attorney who understands the regulatory background surrounding CIPA. Under CIPA, only the FCC and the Director of the Institute of Library and Museum Sciences (IMLS) are provided with an exact right to issue regulations and to penalize libraries for failing to comply with CIPA. Individuals dissatisfied with a library’s implementation of the statute are limited to reporting any alleged violations of the law to FCC or the Director of the IMLS. CIPA does not impose criminal penalties, but it does withhold reimbursements and benefits when a library fails to comply. Therefore, the greatest risk for litigation arises from library patrons using the First and Fourteenth Amendments to mount a challenge to CIPA’s restrictions.

The specific issues and questions included in this Bulletin should be addressed with your county or municipal attorney.

If you have questions concerning this issue, please contact Ellen Nudd, Underwriter, Loss Control & Underwriting Services, at 1-800-673-8231.

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