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Safe and Responsible Use of the Internet: A Guide for Educators

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Part II. Safe and Responsible Internet Use Plan

1. The Children's Internet Protection Act

(Note: For non-U.S. readers, compliance with CIPA is a non-issue. The chapters in this Part address the requirements for an Internet Safety Plan under the framework set forth in CIPA. Notwithstanding the concerns in the U.S. that CIPA has fostered false security with its requirement for the installation of a technology protection measure, the requirements for the Internet Safety Plan are very sound. Therefore, while the following chapters will follow the outline set forth in the CIPA legislation, the issues addressed are universal to any school in any country.)

The CIPA Legislation

The Children's Internet Protection Act (CIPA) was enacted as part of the Consolidated Appropriations Act of 2001[1]. CIPA requires all schools receiving funding through the E-rate program and technology funding through Title III of the Elementary and Secondary Education Act to comply with certain requirements. CIPA was enacted to address Congress's concern that "(a)lthough the Internet represents tremendous potential in bringing previously unimaginable education and information opportunities to our nation's children, there are very real risks associated with the use of the Internet." As Congress found, "(p)ornography, including obscene material, child pornography, and indecent material is available on the Internet[2]."

The CIPA statute was a late session merger of two similar statutes that were pending before Congress, the CIPA and the Neighborhood Children's Internet Protection Act (NCIPA). NCIPA was the result of an effort by some members of Congress to require that districts develop strategies to address the concerns, but the law did not dictate a technological solution. The CIPA provisions of the law address the requirements for the use of a "technology protection measure."

The NCIPA portion of the law requires the development of an Internet Safety Plan. The requirements are well-founded and provide an excellent basis for district planning. Unfortunately, far too many districts have focused on the CIPA provisions and the use of technology protection measures and have not focused strongly enough on the NCIPA provisions addressing an Internet Safety Plan.

On April 5, 2001, the Federal Communication Commission (FCC) issued regulations for the implementation of CIPA[3]. The Schools and Libraries Division[4], which is charged with management of the E-rate program, has complete information for schools regarding timelines and certifications.

The Basic CIPA Requirements

Under CIPA and NCIPA, any school that seeks federal funding through the e-rate program or through any U.S. Department of Education technology-funding program must:

1. Enforce a policy of Internet safety for minors that includes monitoring the online activities of minors and the operation of a technology protection measure that protects against access to visual depictions that are obscene, child pornography, or harmful to minors[5]. (CIPA)

2. Enforce a policy of Internet safety with respect to adults that includes the operation of a technology protection measure that protects against access to visual depictions that are obscene or child pornography[6]. (CIPA)

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[1] The best resource for a copy of the law is a version excerpted from the Appropriations Act that has been placed on the American Library Association web site. URL: http://www.ALA.org/cipa/Law.PDF
[2] Senate Rpt. 106-141 - *CHILDREN'S INTERNET PROTECTION ACT*, Page 2.
[3] Federal Communications Commission, *In the Matter of Federal-State Joint Board on Universal Service Children's Internet Protection Act. Report and Order*. April 5, 2001.
URL: http://www.fcc.gov/Bureaus/Common_Carrier/Orders/2001/fcc01120.doc
[4] URL: http://www.sl.universalservice.org/
[5] 47 U.S.C. 254(h)(5)(B)
[6] 47 U.S.C. 254(h)(5)(C)

3. Adopt an Internet Safety Plan that addresses the following elements:

    a. Access by minors to inappropriate matter on the Internet and World Wide Web.

    b. Safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications.

    c. Unauthorized online access by minors, including "hacking" and other unlawful activities.

    d. Unauthorized disclosure, use, and dissemination of personal information regarding minors.

    e. Measures designed to restrict minors' access to materials harmful to minors[7]. (NCIPA)

4. Provide public notice and hold a public hearing regarding the Internet Safety Plan[8]. (NCIPA)

Most school districts in the country are in compliance with CIPA, or have declined to participate in the E-rate program and any technology funding from the U.S. Department of Education and thus do not need to comply with CIPA. This Guide fully embraces the components of the Internet Safety Plan required under NCIPA, as these provide an excellent framework for the development of policies, regulations, and instruction to address the safe and responsible use of the Internet by students. The author has chosen to refer to this plan as the Safe and Responsible Internet Use Plan because of the perception that safety and responsibility are the two sides of one coin.

Questions Regarding Constitutionality of CIPA

On May 31, 2002, the US District Court for the Third Circuit issued its ruling in a case that the American Library Association, American Civil Liberties Union, and others brought challenging the constitutionality of the Children's Internet Protection Act[9] (CIPA), *ALA v. US*[10]. The court ruled that CIPA was unconstitutional because the actions required under the law would violate the constitutional rights of library patrons, adults and minors, to access constitutionally protected material on the Internet. . The court noted

> (A)s discussed in our findings of fact, every technology protection measure used by the government's library witnesses or analyzed by the government's expert witnesses blocks access to a substantial amount of speech that is constitutionally protected with respect to both adults and minors.[11]"

[7] 47 U.S.C. 254(l)(1)(A))
[8] 47 U.S.C. 254(h)(5)(A)(iii))
[9] Pub. L. No. 106-554.
[10] *American Library Association, et. al. V. United States, No. 01-1303 and 01-1332. In the United States District Court for the Eastern District of Pennsylvania*. (June 2002) URL: http://www.paed.uscourts.gov/documents/opinions/02d0415p.htm
[11] *ALA* at V.B.

This ruling was appealed to the U.S Supreme Court. The Supreme Court overruled the district court in a ruling issued on June 23, 2003[12]. The Supreme Court's determination that CIPA was constitutional was grounded in the understanding that wile filters may block access to material that is constitutionally protected, they can be totally disabled for use by any adult[13]. In the case of minors, any site that is erroneously blocked can be unblocked[14].

Unfortunately, the manner in which the case was presented by the ALA and ACLU led to a decision that did not fully address the interests of minors of access to constitutionally protected material other than the fact that the filter may be overridden to unblock access to an inappropriately blocked site.

A separate decision issued by Justice Kennedy raises a very significant point. Justice Kennedy noted that the decision addressed the CIPA statute on its face. The Justice noted that if the manner in which the statute was implemented in a specific setting in a manner so that a user's access to constitutionally protected material is burdened in some substantial way, this could give rise to an as-applied constitutional challenge.

From the perspective of schools, the significant question is whether the district has implemented the use of filtering in a manner that has placed a substantial burden on student access to constitutionally protected material.

This issue is addressed more fully in Chapters II-3 and III-6. The following are questions that district should consider:

- Does your district have full and complete knowledge of what sites are being blocked and the basis upon which these decisions are made? Have the companies made full public disclosure of this information as necessary to ensure public accountability?

- Has the determination of which categories of material should be blocked been made by school administrators, in accord with the district's determination of what kinds of material should be considered to be inappropriate, and with full knowledge of the kinds of material blocked in those categories? Or has the district's technology services personnel or the filtering company made the determination of what categories are blocked (district using company's default setting)?

- Has the district set the filter to block many categories, which significantly increases the rate of overblocking, or has the district set the filter to block only the categories necessary to be blocked under CIPA?

- Has the district established effective procedure to override the filter in cases when the filter is blocking access to educational material or any material students have a constitutional right to access? Does this process ensure rapid response? Have procedures been established to allow

[12] *United States v. American Library Association*, No. 02-361 In the Supreme Court of the United States. (June 23, 2003) http://www.supremecourtus.gov/opinions/02pdf/02-361.pdf
[13] Id., page 12.
[14] Id., page 12.

students to anonymously request a site be overridden to allow for access to sensitive material?

- Are district officials conducting a periodic review of the filter reports to determine the effectiveness of the district's education (are students accidentally accessing inappropriate sites?), supervision (are students intentionally trying to access inappropriate sites?) and the process to override (are students being prevented from accessing appropriate, constitutionally protected material?)?