



CIPA and Libraries: Challenges and Opportunities

Introduction

Libraries are evolving as rapidly as the technology that has transformed how we discover new information, learn and connect with each other. In cities and counties throughout the nation, public libraries are becoming the central hubs of access to not just books and the internet, but also community-based services and other resources for young people, families and those in need. But as their responsibilities expand, libraries face resource challenges that make serving these growing needs more difficult.

Libraries' role as hubs of internet connectivity for those who may not otherwise have access has created a fundamental challenge: providing information to all while protecting patrons – particularly children – from illegal and harmful content. Striking the right balance has philosophical, technological and legal implications for libraries and those who work in them, particularly since the introduction of a landmark piece of legislation nearly two decades ago.

The Children's Internet Protection Act (CIPA), which became law in 2001, essentially requires all public libraries – whether school or community-based – to filter

or block certain material if they receive federal funding through several avenues, including the E-rate program. Many public libraries have resisted, arguing that complying with these provisions violates the First Amendment and their missions as providers of information to all.

Nearly two decades later, CIPA still poses a challenge for libraries: compliance with the law must be balanced against the need for open access to the internet. But the evolution of technology has made this easier. And there's a potential opportunity within CIPA: compliance can open doors for federal funding opportunities that can help libraries be better community anchors.

"Libraries can be ethical in the way they filter and take advantage of the funding," says Beverly Sutherland, Founder of EdTechnologyFunds, Inc., and an experienced E-rate consultant to libraries. "They don't have to compromise on their stance."

This issue brief outlines what CIPA says and means for libraries, offers strategies for compliance and details funding opportunities through the federal E-rate program.

CIPA, Explained

Enacted by Congress in 2000 to address concerns about children’s access to “obscene or harmful content” on the internet, CIPA imposes requirements on schools and libraries that receive discounts for internet access or internal connections through the federal E-rate program, which is administered by the Federal Communications Commission (FCC). (For more on the E-rate program and libraries, see the box “E-rate Primer”.) CIPA also involves funding through federal and state grant programs overseen by the Library Services & Technology Act, or LSTA. Academic and college libraries are not covered by the law, according to the American Library Association.


CIPA requires libraries to certify they have an internet safety policy that includes technology protection measures. These measures must block or filter internet access to images that are obscene, child pornography or harmful to minors.


Libraries’ broader internet safety policies must address:

- Access by minors to inappropriate matter
- The safety and security of minors when using electronic mail chat rooms and other forms of direct electronic communications
- Unauthorized access such as hacking or other unlawful activities by minors
- Unauthorized disclosure, use and destination of personal information regarding minors
- Measures restricting minors’ access to harmful materials

Libraries also are required to hold at least one public meeting about their internet safety policy before enacting it.¹

However, there are two important clarifying points for libraries under CIPA, both of which have been reinforced by court challenges and new provisions:

 An “authorized person” can disable blocking or filtering to allow unfettered use by adults for “bona fide research or other lawful purposes,” according to the FCC.

 The law doesn’t require libraries to track internet use by either minors or adults.

CIPA was challenged in 2001 in district federal court by the American Library Association, which, in partnership with the American Civil Liberties Union (ACLU), argued the law infringed on First Amendment rights and that the filtering technology of the time

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“wrongly blocked” thousands of web pages containing protected speech. The court agreed, ruling that libraries complying with CIPA would be violating First Amendment protections and that mandatory filtering wasn’t the least restrictive option.²

The ruling also reinforced the idea that libraries play an important role as providers of access to the internet. “By providing internet access to millions of Americans to whom such access would otherwise be unavailable, public libraries play a critical role in bridging the digital divide separating those with access to new information technologies from those that lack access,” the ruling stated.

In 2003, however, the U.S. Supreme Court narrowly overturned the ruling, stating that internet filtering does not violate First Amendment rights and affirming the ability of Congress to connect funding to policy objectives. “The decisions by most libraries to exclude pornography from their print collections are not subjected to heightened scrutiny; it would make little sense to treat libraries’ judgments to block online pornography any differently,” the high court’s ruling states.³ “Concerns over filtering software’s tendency to erroneously ‘overblock’ access to constitutionally protected speech that falls outside the categories software users intend to block are dispelled by the ease with which patrons may have the filtering software disabled.”

CIPA was updated in 2011 by the Protecting Children in the 21st Century Act. While the majority of the new provisions impacted school libraries, the new law and subsequent FCC guidance also reaffirmed the high court’s ruling that filtering and other technology protections can be disabled for adults by libraries, and that local communities have wide leeway in determining the guidelines for doing so.⁴

Filtering has faced additional legal challenges. In the years since CIPA became law, a number of school districts and libraries have been sued over their own policies, including a successful case against a Missouri school district that blocked websites focused on support for lesbian, gay, bisexual and transgender (LGBT) people while not blocking those which oppose protections for these groups.

These rulings “put a lot of fear into libraries,” says Sutherland. Beyond philosophical disagreements about blocking access, she says, “they were afraid they might also get sued for filtering information.”

Strategies for CIPA

CIPA has been challenging for public libraries for many reasons, but arguably the most difficult aspects are connected to their mission.

Libraries see themselves as champions of digital equity. Many are becoming community hubs, including housing social workers and providing community programs, from helping patrons apply for public services to offering resources for workforce development. The ALA calls this broader vision the “Es of libraries,” including education, employment, entrepreneurship, employment and engagement.⁵

For these reasons, many libraries have foregone E-rate and other federal funding. But even those that have avoided CIPA certification have contended with issues involving inappropriate and illegal content being accessed through their computers and systems. And, experts say, filtering technology has improved since CIPA’s passage at the beginning of the century, and the law provides broad leeway in how it is used.

CIPA’s provisions requiring internet filtering don’t specify the technology to be used, according to the ALA. “Although the law clearly requires the use of filtering or blocking technology, it does not require the use of specific filtering software or services. Instead, CIPA requires schools or libraries covered by the new requirements to certify they are using technology that blocks or filters access to visual depictions of the type specified in the legislation.”⁶ And the word “visual” is important – according to the ALA, setting library web browsers to a “text-only” setting may address the requirements.

As mentioned earlier, filtering technology can be turned off by library staff for adults, so long as what they are accessing doesn’t meet the legal definition of obscenity or involve child pornography. That’s an approach reinforced by the 2003 Supreme Court ruling, which states that “the statute contains an important exception that limits the speech-related harm: It allows libraries to permit any adult patron access to an ‘overblocked’ website or to disable the software filter entirely upon request.”⁷ Following that ruling, the FCC clarified that libraries don’t have to determine if adults are pursuing “bona fide research” but can simply turn off filtering at an adult’s request.⁸

Among the options libraries have considered:

- Instead of blocking entire pages, blocking only the images on the page

- Identifying patrons as adults or minors when they log in by verifying their library credentials and giving adults the option of filtered or unfiltered internet access
- Opting adult patrons in to filtering when they first access library systems and allowing them to later opt out
- Providing centralized filtering or maintaining a common whitelist across branches to simplify the management of internet filtering

All these strategies have been enabled by technology. While court rulings assert that filtering technology on its own will never be completely effective in ensuring protected materials aren’t blocked, new tools make it easier for library staff to manage filtering for individual

E-rate Primer

Mandated by the 1996 Telecommunications Act, the federal E-rate program is intended to provide affordable access to telecommunications for both public libraries and K-12 schools. In the decades that have followed, libraries across the nation have leveraged the federal funding, overseen by the Federal Communications Commission, to upgrade networks and provide public access to the internet and other vital services.

In 2014, the FCC modernized the E-rate program, increasing the annual spending cap and emphasizing broadband capacity and Wi-Fi. According to the ALA, the changes were beneficial to libraries. “For the first time in over 15 years, our libraries are assured of receiving funding,” the organization stated in written comments to the FCC.⁹ “The result is that all libraries, whether in remote rural areas or urban centers, have access to much-needed funding for their in-building network requirements.”

New changes for funding year 2021 provide uniform funding for urban and rural libraries at \$4.50 per square foot over the five-year funding cycle, a move expected to benefit rural libraries, since the previous amount set for rural schools in 2014 was \$2.30 per square foot.¹⁰ Changes also allocate funding at the library system and school district level, not to individual buildings. Doing so allows libraries and districts to use their funding in the buildings or locations that need it the most, according to the ALA.

CIPA requires libraries and schools which receive E-rate funding to be compliant with its regulations as a condition of receiving funding.

patrons. Filtering software also is frequently updated by providers and has grown more sophisticated in the years since CIPA's passage.

"What may have once taken a lot of manpower and IT love and care is now really easy to implement and simplify for the end user," Sutherland says.

Conclusion

Nearly two decades after CIPA became law, libraries often fall into one of two extremes. Many have chosen not to comply with the law, forfeiting thousands or even millions of dollars in federal funding. On the other extreme, those complying with CIPA may have enacted policies more restrictive than the law requires.

Too often, argues a brief by the Electronic Frontiers Foundation, "libraries go beyond the legal requirements of CIPA when implementing content filters. ... Libraries across the country are routinely overblocking content, censoring far more than is necessary under the law.

This means library patrons are cut off from whole swaths of the World Wide Web, hampering their access to knowledge."¹¹

While striking the correct balance is challenging, it is possible to do in ways that can serve the needs of

patrons and protect them from accessing harmful and illegal content.

"You can do both – be respectful of people's needs for information, but also be respectful of our children and build a community in the library that is safe and healthy," Sutherland says.

CIPA Resources for Libraries

FCC CIPA Guidelines

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

E-rate

www.usac.org/e-rate/

American Library Association (ALA) CIPA resources

www.ala.org/advocacy/advleg/federallegislation/cipa

Libraries and E-rate (ALA)

www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/erate/Libraries%20and%20E-rate%20-%20January%202018%20Brief.pdf

Texas State Library and Archives Commission resources on Internet filtering

www.tsl.texas.gov/ld/pubs/filters/filtering.html

This piece was developed and written by the Center for Digital Education Content Studio, with information and input from Cisco. The information provided in this paper does not, and is not intended to, constitute legal advice; instead, all information is for general informational purposes only.

Endnotes

1. www.fcc.gov/consumers/guides/childrens-internet-protection-act
2. <http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/advleg/federallegislation/cipa/internet.pdf>
3. <https://www.supremecourt.gov/opinions/boundvolumes/539bv.pdf>
4. <https://www.in.gov/library/files/2011-sl-fall-CIPA-Update.pdf>
5. <http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/erate/Libraries%20and%20E-rate%20-%20January%202018%20Brief.pdf>
6. <http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/advleg/federallegislation/cipa/cipaqa-1.pdf>
7. <https://www.supremecourt.gov/opinions/boundvolumes/539bv.pdf>
8. http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-188A1.pdf
9. <https://ecfsapi.fcc.gov/file/10816028233870/ALA%20Category%20Two%20comments%2008162019.pdf>
10. <http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/erate/ALA%20C2%20Order%20Summary%2012.9.pdf>
11. <https://www.eff.org/deeplinks/2013/09/cost-censorship-libraries-10-years-under-childrens-internet-protection-act>

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