

Compliance with CIPA: The Federal Filtering Mandate

*This document is intended to help schools and libraries understand the requirements of the Children s Internet Protection Act (CIPA), passed as part of a large spending package at the end of 2000. **This is only a guide and should not be understood as the definitive interpretation of this law or as legal advice.** Much of the language in the law is ambiguous and confusing. We expect the Federal Communications Commission, the Department of Education, and the Institute for Museum and Library Services will provide interpretive guidance very soon.*

I. Summary

Any school or library that receives discounted rates for Internet access, Internet service or internal connections under the E-Rate program¹, or receives funding through the Library Services & Technology Act² or Title III of the Elementary and Secondary Education Act³, in order to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet, must comply with the Children s Internet Protection Act (CIPA). Additionally, libraries and schools that receive E-Rate support must also comply with the Neighborhood Children s Internet Protection Act (N-CIPA), which requires the adoption of very detailed Internet Safety Policies.⁴

The first thing that schools and libraries receiving funds under these programs need to know is that ***there is nothing schools or libraries are required to do immediately***. The FCC has indicated that it views October 28, 2001 as the first certification deadline for funds awarded for program year four.⁵ There is no indication that funding for program year three, which runs from July 1, 2000 through June 30, 2001, will be affected by these requirements. Schools and libraries receiving E-Rate discounts for year four will have to certify that they are either in compliance with CIPA and N-CIPA, or that they are working on becoming compliant, and expect to be in compliance by program year five.⁶ While the timeline issues facing Title III and LSTA funding recipients are less clear, the requirements do not apply to current grants. The language does suggest that new grants received after April 20, 2001, will be subject to CIPA requirements.

If your library or school receives discounts or funding from more than one of the federal technology funding programs listed above, note that the requirements are not identical for each program. For example, the E-Rate program does not allow Internet filtering to be disabled for minors under any circumstances, although library or school staff may disable filters for adults conducting bona fide research. While ESEA and LSTA restrictions

¹ Section 254(h)(5) of the Communications Act of 1934 (Note: The filtering mandate does not apply to institutions receiving e-rate discounts only for purposes other than the provision of Internet access, Internet service, or internal connections. CIPA Sec. 1721(a)(5)(A)(ii))

² 20 USC 9134(b)

³ 20 USC 6801 et seq.

⁴ N-CIPA was passed as part of CIPA, Secs. 1731 - 1733 (essentially the last three pages of the 20 page CIPA language).

⁵ Remarks of Kate Moore of the Schools & Libraries Division of the Universal Service Corporation, to the American Library Association Midwinter Meeting, January 13, 2001.

⁶ CIPA Secs. 1721(a)(5)(E)(ii)(II) and 1721(b)(6)(E)(ii)(II)(aa)

permit disabling of filters for both minors and adults conducting bona fide research. CIPA seeks to reconcile these conflicting mandates by limiting the application of the ESEA and LSTA restrictions *only* to institutions that do not also receive covered E-Rate support. The language is less than straightforward:

No funds made available under [ESEA or LSTA] for a [school or library] that does not receive services at discount rates under section 254(h)(5) [or (6)] of the [E-Rate program], as added by section 1721 of [the] Children s Internet Protection Act, may be used to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet, for such [school or library] unless [the institution filters Internet access in specific ways outlined in this law].⁷

We expect that the Federal Communications Commission, which governs the E-Rate program, will conduct a formal rulemaking procedure that will begin in late January 2001, and that will be complete by April 20, 2001. While the FCC will provide more specific guidance to schools and libraries through the rulemaking, the Department of Education and the Institute for Museum and Library Services have not indicated any plan to conduct formal rulemaking. They have indicated the intent to provide guidance in this matter, and to work together and with the FCC in order to harmonize requirements to the greatest extent possible.

An analysis of CIPA s requirements is below.

Institution & Type of Support	Applicable CIPA Requirements
School Receives E-Rate Support ONLY ⁸	Comply with E-Rate Provisions ONLY
School Receives ESEA Support ONLY ⁹	Comply with ESEA Provisions ONLY
School Receives LSTA Support ONLY ¹⁰	Comply with LSTA Provisions ONLY
School Receives BOTH E-Rate and ESEA Support	Comply with E-Rate Provisions ONLY
School Receives NO SUPPORT from E-Rate, ESEA, or LSTA	No requirements under CIPA or N-CIPA
Library Receives E-Rate Support ONLY ¹¹	Comply with E-Rate Provisions ONLY
Library Receives LSTA Support ONLY ¹²	Comply with LSTA Provisions ONLY
Library Receives BOTH E-Rate and LSTA Support	Comply with E-Rate Provisions ONLY
Library Receives NO SUPPORT from E-Rate or LSTA	No requirements under CIPA ONLY

⁷ CIPA Secs. 3601(a)(1) and 1712(f)(1) (emphasis added).

⁸ E-Rate support for Internet access, Internet services, or internal connections — these regulations do not apply to institutions receiving only telecommunications services.

⁹ If a school receives E-Rate funding for telecommunications services **only and** ESEA funding for computers that access the Internet or the direct costs associated with access to the Internet, we read CIPA as requiring compliance with the ESEA regulations.

¹⁰ See above, for schools receiving E-Rate funding for telecommunications services.

¹¹ E-Rate support for Internet access, Internet services, or internal connections — these regulations do not apply to institutions receiving only telecommunications services.

¹² If a library receives E-Rate funding for telecommunications services **only and** LSTA funding for computers that access the Internet or the direct costs associated with access to the Internet, we read CIPA as requiring compliance with the LSTA regulations.

II. Requirements for E-Rate Recipients

The CIPA and N-CIPA requirements for E-Rate recipients are extremely confusing. In each case, particularly those involving deadlines, this document provides our best understanding of this law. Additional guidance from the FCC rulemaking will be forthcoming. We expect a proposed rule in late January 2001, and a final rule on approximately April 20, 2001.¹³

1. Internet Safety Policy

Every school and library that receives E-Rate discounts for Internet access, Internet service, or internal connections, must develop an Internet Safety Policy that meets a number of specific requirements, which are set out below. As we read the law, those schools and libraries that receive E-Rate support ONLY for telecommunications services¹⁴ do not need to comply with CIPA or N-CIPA.

The deadline by which a library or school must meet these requirements is unclear. Portions of the statute suggest a deadline as early as April 20, 2001¹⁵, while other portions suggest that certification of compliance is not required until October 28, 2001¹⁶. The FCC has indicated an intent to harmonize certification deadlines within CIPA and N-CIPA.¹⁷ ***By all accounts, the FCC's proposed rule will require N-CIPA compliant Internet safety policies by October 28, 2001, for schools and libraries receiving E-Rate support during program year four.***

The FCC has indicated that it intends to make compliance with N-CIPA minimally burdensome, meaning that it is unlikely that the FCC will request specific details about Internet safety policies. Instead, we expect that they will adopt a check-off certification on Form 486, the Receipt of Service Confirmation Form.¹⁸

2. Requirements of the Internet Safety Policy

¹³ CIPA Sec. 1733 indicates that the FCC shall prescribe regulations for this act no later than 120 days after the date of enactment. CIPA was signed by the President on December 21, 2000. CIPA Sec. 1732(4) indicates the same deadline applying to schools and libraries developing Internet safety policies. This means that if the FCC rulemaking process results in a later deadline for compliance with the Internet safety policy requirements, the later deadline would not be clearly established until the early deadline was eminent.

¹⁴ And who do not receive funding covered by CIPA under ESEA or LSTA.

¹⁵ N-CIPA Sec. 1732(4) reads, This subsection shall apply with respect to schools and libraries on or after the date that is 120 days after the enactment of CIPA. (April 20, 2001)

¹⁶ CIPA Secs. 1721(a)(5)(E)(i)(I) and 1721(b)(6)(E)(i)(I) indicate that in general, during the first program year in which CIPA applies, E-Rate recipients must certify compliance not later than 120 days after the beginning of such program funding year. (October 28, 2001)

¹⁷ Remarks of Kate Moore of the Schools & Libraries Division of the Universal Service Corporation, to the American Library Association Midwinter Meeting, January 13, 2001.

¹⁸ See also Penalties for Non-compliance below.

This law includes both procedural and substantive requirements for the Internet safety policy. The procedural requirements focus on public notice and a public meeting or hearing. The substantive requirements address Internet content and unacceptable activities minors might engage in online.

Many schools and libraries already have policies addressing some or all of the issues required by N-CIPA. You should consult with counsel to determine whether or not your current policies meet the detailed procedural and substantive requirements of N-CIPA. ***If your current Internet policies do not meet BOTH the procedural AND substantive requirements of N-CIPA, you will need to revise them.***

a. Procedural Requirements of the Internet Safety Policy

Schools and libraries are required to provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.¹⁹

CIPA makes clear that the entity responsible for school administration, such as the school board or local educational agency, is responsible for providing notice and conducting the public meeting or hearing. CIPA also permits private schools to limit the public meeting to those members of the public with a relationship to the school.²⁰

CIPA does not define public notice and hearing in the library context. In the absence of specific guidance, it appears reasonable to assume that library boards, which govern other aspects of library operation, are responsible for providing notice and conducting the public meeting or hearing on the Internet safety policy. Libraries should consult their counsel before deciding how to proceed with a public notice and hearing.

b. Substantive Requirements of the Internet Safety Policy

This portion of the law focuses on the topics that must be addressed in the Internet safety policy ***other than Internet filtering***.²¹ Libraries and schools must adopt and implement a policy that addresses all of the following issues:

- ❑ Access by minors to inappropriate material on the Internet and World Wide Web;
- ❑ The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications; (i.e. Instant Message services)
- ❑ Unauthorized access, including so-called hacking and other unlawful activities by minors online;

¹⁹ CIPA Sec. 1732(1)(B).

²⁰ CIPA Sec. 1721(a)(5)(A)(iii)

²¹ As schools and libraries receiving E-Rate funding for Internet access, Internet service, or internal connections will have to install and use filtering software as part of their Internet safety policies (under deadlines and restrictions described in more detail below), it may be a good idea to include discussion about Internet filtering costs, customizability, and both the categories mandated by CIPA and other categories that local communities consider inappropriate for minors and may choose to filter at the public meeting. But public discussion of the filtering software does not appear to be required by the law.

- ❑ Unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and
- ❑ Measures designed to restrict minors' access to materials harmful to minors;

While some of these elements are straightforward, others are not. Below, we attempt to provide assistance for addressing inappropriate material and restricting access to materials harmful to minors.

Inappropriate Material: In these new or revised policies, schools and libraries must address minors' access to inappropriate material. The definition of inappropriate material is specifically left to local determination under N-CIPA Sec. 1732(2), which reads:

Local Determination of Content — A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may —

- (A) establish criteria for making such determination;
- (B) review agency determination made by the certifying school, school board, local educational agency, library, or other authority; or
- (C) consider the criteria employed by the certifying school, school board, educational agency, library, or other authority in the administration of subsection (h)(1)(B).

While the definition of inappropriate material is left to local communities, we caution institutions to tread carefully. School and library policymakers should involve their legal counsel in the drafting of any definitions or policies aimed at limiting access to materials on the Internet, in order to avoid running afoul of the First Amendment. Since the policies must also address harmful to minors material (see below), the term inappropriate material plainly anticipates limiting access to material which may be constitutionally protected as to minors.

Access to Harmful to Minors Material: In the new or revised Internet safety policies required by N-CIPA, schools and libraries must address measures designed to restrict minors' access to materials harmful to minors. Because the filtering of material harmful to minors is addressed in detail in other sections of this bill, this requirement suggests that schools and libraries must implement *other measures beyond Internet filtering* to limit minors' access to material harmful to minors. The law does not describe what those measures are, implicitly leaving such determinations to the local authority.

Harmful to minors is defined in CIPA as:

Any picture, image, graphic image file, or other visual depiction that--

- (i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
- (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, 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 as to minors.²²

Libraries and schools should consult their counsel before they attempt to implement this provision. Many states have harmful to minors laws, which may be helpful as institutions implement CIPA and N-CIPA.

3. Internet Filtering Requirements

As a general rule, schools and libraries that receive E-Rate discounts for Internet access, Internet service, or internal connections, must block or filter all access to visual depictions that are obscene, child pornography, harmful to minors, or that the local school or library authority determines are inappropriate for minors. (Text is not affected.) Those institutions that only receive E-Rate funding for telecommunications services (generally, basic telephone service) are not required to comply with these requirements.

CIPA uses the phrase technology protection measures throughout the bill. Although this suggests that other technological tools, such as monitoring programs, could be used instead of filtering software, this is not the case. CIPA defines technology protection measure as a specific technology that *blocks or filters Internet access* to [specified material].²³

a. Whose Access Must Be Filtered?

1. General Rule

All Internet access must be filtered, whether minors (under 17) or adults are using the computer, and regardless of how many computers with Internet access the school or library provides. However, CIPA's requirements for what must be filtered are more restrictive for minors than adults, so libraries and schools may choose to implement different settings for the filters depending on whether adults or minors are using the computer.

²² Secs. 1703(b)(2), 3601(a)(5)(F), 1712(a)(2)(f)(7)(B), and 1721(c)(G) (Definition is repeated in the same form.). This definition is similar to that used in the Children's Online Protection Act (COPA), although unlike CIPA, Congress did not limit COPA's applicability to visual depictions of this material.

²³ CIPA Secs. 1703(b)(1) and 1721(c)(I). The definitions are not identical. Sec. 1703(b)(1) specifies that by definition technology protection measure must filter or block material that is obscene, child pornography, or harmful to minors. Sec. 1721(c)(1) defines technology protection measure as filtering or blocking the material required to certify under CIPA.

When minors are using the Internet, access to visual depictions that are any of the following must be blocked or filtered:

- obscene;²⁴
- child pornography;²⁵ or
- harmful to minors.²⁶

However, when adults are using the Internet, only material which is obscene or child pornography must be filtered or blocked.

The requirement that filtering or blocking products limit access to content that meets specific legal standards presents particular concern, since no commercially available filtering software or services that we are aware of can do so with precision. Schools and libraries will have to work with counsel to determine what choices, within the filtering products available, best meet the standards of their community.

2. Exception to the General Rule: Adults Doing Bona Fide Research

The E-Rate program explicitly permits an institution to disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose. The law provides no definition of this phrase.

This is one of the areas in which the restrictions on E-Rate funding differ from the restrictions on Title III or LSTA funding. The Title III and LSTA funding restrictions also permit institutions to disable a technology protection measure under paragraph (1) to enable access for bona fide research or other lawful purposes, but do not limit that exception to adults. Because the Title III and LSTA portions of CIPA only apply to institutions that are not covered by the E-Rate regulations, an institution receiving

²⁴ CIPA indicates that the term obscene is defined in 18 U.S.C. 1460. No definition appears in that section. However, the definition established in the landmark case *Miller v. California*, 413 U.S. 15 (1973), is a three part test: 1) Whether the average person, applying contemporary community standards, would find the work (taken as a whole) appeals to the prurient interest; 2) Whether the work depicts sexual conduct in a patently offensive way; and 3) Whether the work (taken as a whole) lacks serious literary, artistic, political, or scientific value. This is the test generally applied by courts that are attempting to evaluate whether material is obscene.

²⁵ CIPA refers to the definition of child pornography set forth in 18 U.S.C. 2256: "child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where -

- (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- (B) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;
- (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or
- (D) such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct;

²⁶ Defined and discussed above.

funding through multiple sources covered by CIPA would have to comply with the more restrictive E-Rate standards.

There are no exceptions to the CIPA E-Rate requirement that Internet access be filtered at all times rule for minors. It does not appear that a teacher or librarian can legally approve an on the spot override of a web site he or she believes has been wrongly blocked, such as using the password-protected and time-limited filter disabling option available with some filtering services. If the material is wrongly blocked, it must be unblocked by the company after a request by the library or school. In order to access inappropriately blocked sites, students or library patrons will have to wait for that process to be completed and then revisit the site another time.

When adults use computers in schools and libraries subject to CIPA's E-Rate provisions, a librarian or administrator *may* disable the filtering software to enable access for bona fide research or other lawful purposes. However, the language does not appear to require that schools or libraries afford adults unfiltered access to the Internet, even for a so-called bona fide request.

b. Paying for Filtering Technology

E-Rate funding is *not* available to pay for Internet filtering software. However, funds available under Sec. 3134, Part A of Title VI of ESEA, or Sec. 231 of LSTA, may be used for the purchase or acquisition of the technology protection measures required by CIPA, namely filtering and blocking software or services.²⁷

c. E-Rate Filtering Deadlines

The deadlines that schools and libraries must meet in order to comply with CIPA are confusing, conflicting, and vague. We expect that those deadlines applicable to the E-Rate program will be clarified as part of the FCC rulemaking.

Currently, E-Rate funding applications are being accepted for Program Year 4, which begins on July 1, 2001. By all accounts, the FCC will consider Program Year 4 to be the first program funding year following [the] effective date of CIPA. CIPA recognizes that local procurement rules may not conform with the certification requirements of CIPA, and allows for certification that a school or library is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification²⁸ during the first program funding year. Specifically, the filtering requirements in CIPA appear to establish the following deadlines, which should be further clarified in the FCC rulemaking:

²⁷ CIPA Sec. 1721(g)(1).

²⁸ CIPA Secs. 1721(a)(E)(ii)(II)(aa) and (b)(E)(ii)(II)(aa).

- April 20, 2001: 120 days after the enactment of CIPA. This is the deadline by which the FCC shall prescribe regulations to implement CIPA.²⁹
- July 1, 2001: Beginning of E-Rate Program Year 4 and first program funding year in which the CIPA filtering mandate applies.
- October 28, 2001: 120 days following the beginning of the first program funding year in which the CIPA filtering mandate applies.
This is the most likely deadline for certification that a school or library is filtering pursuant to the requirements of CIPA, or is in the process of becoming compliant, including procuring filtering software or services.
- July 1, 2002: Beginning of E-Rate Program Year 5 and second program funding year in which the CIPA filtering mandate applies. Waivers are possible during this program year, for institutions that are engaged in procuring Internet filtering, but because of local procurement procedures, have not yet been able to implement filtering.
- July 1, 2003: Beginning of E-Rate Program Year 6 and third program funding year in which the CIPA filtering mandate applies. Waivers are no longer possible during this program year.

d. Certification Options During the First Three Program Years

1. E-Rate Program Year 4/CIPA First Year:

At whatever deadline the FCC determines to be the certification deadline (most likely October 28, 2001) *schools and libraries may certify that they are either:*

- *Already filtering* obscene material, child pornography, and material that is harmful to minors, or
- *Undertaking actions necessary to implement the CIPA filtering mandate*, including procurement of filtering software or services.

2. E-Rate Program Year 5/CIPA Second Year:

As part of the application process for E-Rate funding during Program Year 5 (approximately one year from now) schools and libraries must certify that they are filtering obscene material, child pornography, and material that is harmful to minors. The specific process and deadline should be made clear during the upcoming FCC rulemaking.

If a school or library cannot meet this deadline because of local procurement rules, regulations, or competitive bidding requirements, it may apply for a waiver. However, the application for a waiver must include certification that the school or library will be in compliance with CIPA's filtering mandate before the start of the CIPA third year.

3. E-Rate Program Year 6/CIPA Third Year:

²⁹ CIPA Sec. 1733.

As part of the application process for E-Rate funding during Program Year 6 (approximately two year from now) schools and libraries must certify that they are filtering or blocking obscene material, child pornography, and material that is harmful to minors.

Waivers will no longer be available beginning with E-Rate Program Year 6. Schools and libraries that do not comply with CIPA and N-CIPA will no longer be eligible for E-Rate discounts.

e. Penalties for Noncompliance

1) Failure to Submit Certification

Any library or school that fails to submit the certification requirements described above shall be ineligible for funding under the E-Rate program.³⁰

2) Failure to Comply with Certification

Any school or library that knowingly fails to ensure the use of its computers³¹ in compliance with these requirements not only loses eligibility for funding, but must reimburse the E-Rate fund for discounts received during the period covered by such certification.

Additionally other laws, including criminal laws, provide serious penalties for providing fraudulent information to the federal government.

f. Remedies

Libraries and schools that lose funding eligibility because of failure to certify or to comply with certification can regain eligibility for E-Rate funding if they become compliant with CIPA and N-CIPA requirements, and certify to the FCC that they have done so.

III. Requirements Under Title III of the Elementary and Secondary Education Act of 1965 AND Under the Library Services & Technology Act

The CIPA requirements for institutions receiving ESEA and LSTA funding are substantially similar, and implementing each raises similar challenges.

As set out in Section I, the CIPA requirements are slightly different for institutions that only receive ESEA or LSTA funding than for participants in the applicable portions of

³⁰ CIPA Sec. 1721(F)(iii)(I).

³¹ CIPA Sec. 1721(F)(iii)(II).

the E-Rate program. This section analyzes the CIPA requirements that apply to schools and libraries that receive ESEA or LSTA funds for computers used to access the Internet, or to pay for direct costs associated with accessing the Internet, *but that do not participate in the E-Rate program.*³²

1. Internet Filtering Requirements

The general filtering requirements on funding under Title III of ESEA and LSTA, for computers used to access the Internet, or to pay for the direct costs associated with accessing the Internet,³³ are the same as those for the E-Rate. Schools that receive ESEA funds must block or filter all access to visual depictions that are obscene, child pornography, or harmful to minors. The rules do not apply to text.

a. Whose Access Must Be Filtered?

1) General Rule

The general rule for whose access must be filtered, and how, is exactly the same as the general rule for E-Rate recipients, as described above.

2) Exception to the General Rule: Bona Fide Research

The exception to the rule of whose access must be filtered is somewhat more flexible for ESEA and LSTA recipients than for E-Rate recipients.

If a school or library receives only funding through the ESEA or LSTA, the school may disable the Internet filtering software or service to enable access for bona fide research or other lawful purposes.³⁴ Unlike the E-Rate rule, disabling filters for research appears to be permissible for both minors and adults. We do not expect that the Department of Education or the IMLS will clarify the meaning of the phrase bona fide research or other lawful purposes. The ESEA and LSTA regulations do not appear to require such disabling, but they do appear to permit greater flexibility than the E-Rate rule.

2. Deadlines Under ESEA and LSTA

CIPA's deadlines for ESEA and LSTA grantees are difficult to interpret. Local libraries and educational agencies are required to certify that libraries and schools are in compliance with CIPA as part of the application process for the next program funding year under this Act following the effective date of this section, and for each subsequent program funding year thereafter.³⁵ The only unambiguous date applicable to ESEA and

³² With the exception of schools and libraries that receive E-Rate discounts only for telecommunications services.

³³ CIPA Secs. 3601(a)(1) and 1712 (a)(1).

³⁴ CIPA Secs. 3601(a)(3) and 1712(a)(f)(3).

³⁵ CIPA Secs. 3601(a)(2) and 1712(a)(f)(4)(A).

LSTA grantees is the effective date of CIPA — April 20, 2001.³⁶ However, while the program year language has a uniform meaning under the E-Rate, it does not for programs under Title III or LSTA.

As with the E-Rate program, libraries and schools receiving funding under LSTA and ESEA have another full year to come into compliance if they are not able to do so during the first year. However, by the third year after CIPA goes into effect, no more waivers are available.³⁷

We read the statute as equating program years with annual program application cycles,³⁸ as referenced with regard to schools and libraries that already have Internet safety policies and Internet filtering or blocking technology in place. However, it is not absolutely clear that these are the same, and annual program application cycle also lacks a uniform meaning for programs under Title III and LSTA.

We expect that the Department of Education and the IMLS will provide guidance for schools and libraries on the deadlines which apply to which Title III and LSTA programs. This issue may be particularly complicated for recipients of LSTA funding, which is distributed on behalf of IMLS by 59 separate grantmaking authorities, each with its own annual program application cycle.

3. Paying for Filtering Technology

Funds available under Sec. 231 of LSTA and under Sec. 3134, Part A of Title VI of ESEA may be used for the purchase or acquisition of the technology protection measures required by CIPA, namely filtering and blocking software or services.³⁹

4. Penalties for Noncompliance

The primary difference between E-Rate CIPA regulations and those applying to ESEA and LSTA funding cannot be recovered from schools or libraries that are found to be non-compliant.⁴⁰

In the event that a school or library receiving ESEA or LSTA funding does not comply with these requirements, CIPA authorizes use of penalties available under the General Education Provisions Act, including withholding of further payments and issuance of a complaint to further compliance through a cease and desist order. It also permits the Department of Education or the IMLS to enter into a compliance agreement with a funding recipient.⁴¹ Additionally other laws, including criminal laws, provide serious penalties for providing fraudulent information or certifications to the federal government.

³⁶ CIPA Secs. 3601(b) and 1712(b).

³⁷ CIPA Secs. 3601(a)(2)(B)(ii) & (iii) and 1712(a)(f)(4)(ii) & (iii).

³⁸ CIPA Secs. 3601(a)(2)(B)(i) and 1712(a)(f)(4)(i).

³⁹ CIPA Sec. 1721(g)(1).

⁴⁰ CIPA Secs. 3601 (a)(4)(C) and 1712(a)(f)(5)(B).

⁴¹ CIPA Secs. 3601 (a)(4)(A) and 1712(a)(f)(5)(A).

5. Remedies

Schools and libraries that lose ESEA or LSTA funding because of non-compliance with the filtering mandate can regain it by coming into compliance. Those schools and libraries must submit certification or other appropriate evidence to the Department of Education or the IMLS for the agency to resume payments.