

## INTRODUCTION

Since June 23, 2003, when the U.S. Supreme Court found the Children's Internet Protection Act (CIPA)<sup>1</sup> constitutional, many libraries are, for the first time, seriously considering installing Internet filters.

CIPA states that libraries must install a technology protection measure (such as a filter) that protects against visual depictions of material that are obscene, child pornography, or harmful to minors to qualify for E-rate discounts for Internet access and support under the Telecommunications Act, 47 U.S.C. § 254, or to use Library Services and Technology Act (LSTA), 20 U.S.C. § 9101 et seq., funds to pay for the costs of Internet service or computers that have access to the Internet.

Despite being named the Children's Internet Protection Act, CIPA restricts access to content for adults and children alike. The law mandates that all computers be filtered, including staff computers.

Some libraries have been using filters in the children's areas for years in response to demands within their community. These libraries, as well as some libraries that may not be using filters at all, will now have to install a technology protection measure on every library computer or give up their applicable E-rate discounts or LSTA funds.

Many useful resources are available for sorting out whether your library must comply with CIPA. Bob Bocher's FAQ on CIPA and E-Rate Compliance<sup>2</sup> is widely recognized as one of the best explanations of CIPA and its effect on E-rate rules. In addition, the American Library Association (ALA) monitors the issue closely and provides timely information on the CIPA pages of its website.

Numerous articles also have been written that analyze the Supreme Court's ruling and its effect on First Amendment protections including:

- Deborah Caldwell-Stone. "Public Libraries and the Internet—The Supreme Court Upholds Funding Conditions Mandating Internet Filters," *Municipal Lawyer* (November/December 2003).
- Minow, Mary. Children's Internet Protection Act (CIPA): Legal Definitions of Child Pornography, Obscenity and "Harmful to Minors" LLRX.com (August 31, 2003); [www.llrx.com/features/updatecipa.htm](http://www.llrx.com/features/updatecipa.htm).
- Paul M. Smith and Daniel Mach. "Major Shifts in First Amendment Doctrine Narrowly Averted," *Communications Lawyer* (Fall 2003).
- Paul T. Jaeger and Charles R. McClure. "Potential Legal Challenges to the Application of the Children's Internet Protection Act (CIPA) in Public Libraries: Strategies and Issues." *First Monday*, vol. 9, no. 2 (February 2004), [www.firstmonday.org/issues/issue9\\_2/jaeger](http://www.firstmonday.org/issues/issue9_2/jaeger).

On July 24, 2003, the Federal Communications Commission (FCC) adopted an order that updated regulations pertaining to CIPA for libraries. This order specifies that each library must have an Internet safety policy in place by July 1, 2004, that includes all the following:

- The use of a technology protection measure, such as filtering or blocking software
- An installation on every library computer
- A procedure in place for unblocking the filter on the request of an adult

[www.dpi.state.wi.us/dltcl/pld/cipafaq.html](http://www.dpi.state.wi.us/dltcl/pld/cipafaq.html)

American Library Association on CIPA,  
[www.ala.org/cipa](http://www.ala.org/cipa)

The American Bar Association publication will be archived at [www.abanet.org/forums/communication/copub.html](http://www.abanet.org/forums/communication/copub.html) after issue expires.

FCC CIPA order,  
[www.ala.org/ala/washoff/WOissues/civilliberties/washcipa/fcccipa.htm](http://www.ala.org/ala/washoff/WOissues/civilliberties/washcipa/fcccipa.htm)

Each library should engage legal counsel when developing an Internet safety policy or Internet use policy (IUP). Librarians haven't likely seen the end of CIPA. As-applied challenges will probably be brought by parties who feel it violates constitutional protections, and those who say CIPA doesn't do enough to protect children may ask library boards and Congress to expand the law's requirements.

This report focuses on the technology associated with filtering, and different strategies are presented as possible solutions. It provides the library community with a broad range of options to choose from as each library implements Internet use policies (IUP) that address their community's needs. Discuss the legal ramifications of any particular filtering strategy with your library's legal counsel.

### Note from the author

I began my exploration of Internet filters for public libraries in 2001 when Holly Hinman, director of Infopeople, asked me to evaluate currently available filters suitable for libraries and prepare a consumer's guide style report. I set up a lab and personally evaluated several products. I considered ease of use and management, accuracy, and their ability to effectively block only commercial pornography.

Since that initial work with the filters, I have had innumerable conversations with library staff using filters. The staff included library directors, technology staff, and professional and paraprofessional staff on the frontlines with patrons.

Filters have proved to be helpful to libraries providing Internet access to the public. Current laws require libraries to block obscenity and child pornography while ensuring adults continue to have access to constitutionally protected speech. These sometimes conflicting tasks have created a nearly impossible balancing act for libraries.

I do not take the position that filters *should not* be used in libraries. Nor do I take the position that filters *should* be used in libraries. Management of Internet access, including the use of filters or not, is a decision most appropriately made by each library based on the needs of the local community.

I come to this issue recognizing the importance of the U.S. Constitution and the protections provided, particularly by the Bill of Rights. These protections are under attack and all citizens, not just librarians, are obligated to challenge policies that legitimize censorship or lead to loss of privacy.

Fear pervades our culture and drives our policies today—fear of international terrorism, fear of online predators, fear of people and values different from our own. Laws such as the Children's International Protection Act (CIPA) and the USA PATRIOT Act have emerged in response to these fears. Some people are of the mistaken belief that technology can solve problems that are better addressed with education, training, celebration of diversity, and policies that encourage cooperation and understanding rather than mistrust and isolation.

I also come to this issue as a technologist who is painfully aware of the limits of technology. I see software companies market their filtering products as CIPA-compliant and as filter solutions when they are, at best, imperfect responses to a complex, highly subjective problem.

The values represented by our libraries and the services being provided in our libraries are critical to our society. Literacy, access to information, tolerance,

love of learning, community—these values are all represented in library programs. Thankfully, as fear pervades other institutions, libraries continue to focus on the positive.

Librarians face many decisions regarding filtering. They can eschew E-rate discounts or they can comply. They can attempt to follow the letter of the law or they can use filters to block obscenity, child pornography, and more.

How any given library responds to these choices must be made locally. This report clarifies the issues associated with filtering in libraries and provides the information each library needs to decide whether to filter, and if applicable how to do it in a way that conforms to library values.

## Scope

This report explores the issues associated with using Internet content filters in libraries. Throughout the report, specific products will be referenced and the differences discussed.

Readers who wish to understand the myriad issues at work when filters and libraries come together will benefit from reading each chapter in order. Each chapter also is designed to stand on its own and provide targeted assistance for libraries considering filtering, selecting a filter, or implementing a filter.

- Chapter 2 focuses on how filters work and addresses some inherent conflicts of using filters in a library setting. The goal is to provide enough technical information about how filters work and their impact on the library to enable stakeholders to decide whether they wish to use them.
- Chapter 3 provides information about finding, selecting, and evaluating filters available on the commercial market and through open-source channels.
- Chapter 4 provides best practices guidelines for using filters in the library where issues of First Amendment rights, patron privacy, and CIPA compliance come into play.
- Chapter 5 looks at the future of library filtering.

## Notes

<sup>1</sup> The American Library Association (ALA) website provides a succinct history of CIPA as follows: Congress passed the Children's Internet Protection Act (CIPA) and the Neighborhood Internet Protection Act (NCIPA) as part of a major spending bill (H.R. 4577) on Dec. 15, 2000. President Bush signed the bill into law on Dec. 21, 2000 (Public Law 106-554). The Acts place restrictions on the use of funding that is available through the Library Services and Technology Act, Title III of the Elementary and Secondary Education Act, and on the Universal Service discount program known as the E-rate. These restrictions take the form of requirements for Internet safety policies and technology that blocks or filters certain material from being accessed through the Internet. The law was permanently enjoined by a three-judge panel on May 30, 2002. The Supreme Court overturned the decision June 23, 2003. [www.ala.org/Content/NavigationMenu/Our\\_Association/Offices/ALA\\_Washington/Issues2/Civil\\_Liberties,\\_Intellectual\\_Freedom,\\_Privacy/CIPA1/Legislation/Legislation.htm](http://www.ala.org/Content/NavigationMenu/Our_Association/Offices/ALA_Washington/Issues2/Civil_Liberties,_Intellectual_Freedom,_Privacy/CIPA1/Legislation/Legislation.htm) (Jan. 17, 2004).

<sup>2</sup> Bocher, Bob. FAQ on E-Rate Compliance. [www.dpi.state.wi.us/dltcl/pld/cipafaq.html](http://www.dpi.state.wi.us/dltcl/pld/cipafaq.html) (Jan. 17, 2004).

Much of the research for this report is available at [www.libraryfiltering.org](http://www.libraryfiltering.org). This website is maintained by the author and will continue to be updated as long as the need for filter information exists for libraries.