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News for School Clients

**CHILDREN'S INTERNET
PROTECTION ACT**

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CHILDREN'S INTERNET PROTECTION ACT

The Children's Internet Protection Act ("CIPA" or "Act") (20 U.S.C. §9134; 47 U.S.C. §254) passed Congress on December 21, 2000 as part of a large federal appropriations measure (Pub. L. No. 106-554). The Act, effective April 20, 2001, applies to school districts and libraries that receive either (1) Universal Service discounts (E-rate) for Internet access, Internet service, internal connections or (2) funds under the Library Services and Technology Act or Title III of the Elementary and Secondary Education Act to purchase computers for Internet access or pay for Internet services.

To comply with the requirements of CIPA, school districts and libraries that receive federal funds must implement a "technology protection measure" (i.e., filter) on any computer with Internet access. The filter must block adult and minor users' Internet access to "visual depictions" that are obscene or constitute child pornography. The filter must also include an additional protection for individuals who are not yet 17 years of age. Specifically, the filter must also block any picture, image, graphic image file, or other visual depiction that is considered "harmful to minors."

Under CIPA, an administrator, supervisor, or other person authorized by the school district or library authority may disable the technology protection measure, during use by an adult, for bona fide research or other

lawful purposes. There is no provision in the E-rate language of CIPA, however, that allows unfiltered access by minors for any purpose at any time. The disabling provision applies only to adults.

Soon after CIPA was adopted by Congress, several groups, including the American Civil Liberties Union ("ACLU") and the American Library Association ("ALA"), filed a legal challenge to prevent the enforcement of CIPA's filtering requirement in public libraries. On May 31, 2002, a three-judge panel sitting in the Eastern District of Pennsylvania held that the CIPA filtering mandate for public libraries was unconstitutional because it violated the First Amendment rights of library patrons. *American Library Ass'n, Inc. v. U.S.*, 201 F. Supp.2d. 401 (E.D. Pa. 2002). Applying a strict scrutiny standard of review, the District Court noted that, "although the Government has a compelling interest in preventing the dissemination of obscenity, child pornography, or, in the case of minors, material harmful to minors, the use of software filters is not narrowly tailored to furnish those interests." *Id.* at 471, 479. The United States Department of Justice, acting on behalf of the Federal Communications Commission ("FCC") and the United States Institute of Museum and Library Sciences ("IMLS"), appealed the district court's decision to the United States Supreme Court.

On June 23, 2003, the United States Supreme Court issued its opinion in the case of *United States v. American Library Ass'n, Inc.*, No. 02-361, slip op. 539 U.S. ____ (2003). In a 6-3 decision, the Court reversed the lower court's ruling and upheld the federal law that allows the government to withhold money from libraries that choose not to install blocking devices. Chief Justice Rehnquist, speaking for a plurality of the Court, concluded that the District Court's reliance on the principle that public libraries are public forums and, therefore, any restriction on speech or expression in that public forum is subject to a strict scrutiny standard of review, is flawed. The Chief Justice explained that "[i]nternet access in public libraries is neither a "traditional" nor a "designated" public forum" and therefore, the rational relationship standard must be applied to determine whether the government's attempt to restrict speech in public libraries outweighed the public's interest in viewing unfiltered Internet materials. *Id.* at 8. Finding that the government's interest in protecting children from obscenity, child pornography and other "harmful" material outweighed the public's burden in having the filtering software disabled, the Court reasoned that, "[w]hen a patron encounters a blocked site, he need only ask a librarian to unblock it or (at least in the case of adults) disable the filter." *Id.* at 12. The Court also rejected the

District Court's view that unblocking and disabling the filter would be too embarrassing to some library patrons by stating, "the Constitution does not guarantee the right to acquire information at a public library without any risk of embarrassment." *Id.*

The FCC is expected to issue substantive guidance on the timeframe and process for library E-rate compliance by August 2003. If your district has not yet made a decision on whether to install filters, but has applied for 2003 E-rate discounts on Internet services, the Department of Public Instruction recommends that you do not file your E-rate form 486 until the FCC releases its compliance information. With the 2003 E-rate funding year beginning July 1, 2003, the ALA has encouraged the FCC to allow libraries until June 30, 2004 to comply with the filtering mandate. See Department of Public Instruction, *FAQ on E-rate Compliance with the Children's Internet Protection Act* (September 27, 2002), available at <http://www.dpi.state.wi.us/dltcl/pld/cipafaq.html>.

The IMLS, the agency that administers the Library Services and Technology Act program at the federal level, is expected to issue information on the timeframe and process for compliance with the Act by early August.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

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