

Changes To The E-rate Program And Complying With CIPA: A Brief FAQ

(August 2017)

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Over the past several years the Federal Communications Commission (FCC) has initiated the most comprehensive reforms of the E-rate program since its inception in 1996. With these reforms some libraries are reviewing their participation in the program with the realization that requesting E-rate discounts on certain services requires compliance with the Children’s Internet Protection Act (CIPA). This FAQ provides an overview of the 2014 E-rate Modernization and the issue of CIPA compliance. While reasonable efforts were made to ensure the accuracy of this document, the Federal Communications Commission (FCC) and the Schools and Libraries Division are the official sources of information on the E-rate program and CIPA.

Q: What are the changes to the E-rate program?

A: One of the most significant changes the FCC made in 2014 was to increase overall funding—from \$2.4 billion annually to \$3.9 billion—to help provide more support for high-capacity broadband connectivity to libraries and schools.¹ The FCC expects these additional funds will ensure that all applications for all E-rate eligible services will be fully funded through 2019. The added funding is especially important because in past years insufficient funding meant that almost no libraries received E-rate funds for internal connections, which include network equipment for internet access and Wi-Fi connectivity inside the library building. Receiving E-rate funds for internal connections is particularly important because outdated network hardware is often an impediment to robust broadband internet access needed by both staff and patrons.

In this Order we provide certainty on the future of E-rate funding. The increased funding will enable libraries to plan how best to upgrade their networks and at what pace. —FCC press release, December 2014

Q: How does the increase in E-rate funding relate to CIPA compliance?

A: The good news is that with the E-rate reforms there is now sufficient funding to approve all E-rate applications, including those for internal connections. But this good news is tempered with the realization that E-rate discounts for both internet access and all internal connections—including managed internal broadband services (MIBS) and basic maintenance of internal connections (BMIC)—require compliance with CIPA. (Discounts for broadband circuits do not require CIPA compliance.)

Q: From a national perspective isn’t the American Library Association opposed to filters?

A: Yes. In July 1997 the ALA passed a resolution opposing the use of filters in libraries. This position has been re-affirmed several times, most recently in 2015.² But in this latest document ALA also acknowledges that libraries “are governed by local decision makers and local considerations and often must rely on federal or state funding for computers and internet access.” In other words, the decision to comply—or not—with CIPA is ultimately a local decision.

Q: If my library wants to consider applying for E-rate discounts for internet and internal connections, what actions are needed to be CIPA compliant?

A: While compliance is often centered on filtering, the law actually has three basic requirements as follows:

(1) *A library must have an internet safety policy that, at a minimum, addresses five elements:*

- Access by minors to inappropriate material on the internet,
- Safety and security of minors using electronic communications (e.g., email, social networks),
- Unauthorized access and other unlawful activities by minors,
- Unauthorized disclosure or use of personal information regarding minors, and
- Measures designed to restrict minors’ access to materials harmful to minors.

¹ FCC information on this major E-rate reform is at <https://www.fcc.gov/e-rate-update> and ALA summaries of the reforms are linked at <http://www.ala.org/advocacy/telecom/erate>.

² See: “Internet Filtering: An Interpretation of the Library Bill of Rights” at <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/internet-filtering>.

(2) *A library must filter internet access:*

- The filter must be active on all library computers with internet access and it must protect against access to images that: (1) are obscene, (2) contain child pornography, or (3) are harmful to minors. The first two prohibitions are defined in federal statutes (18 U.S.C. 1460 et seq.; 18 U.S.C. 2256 et seq.). Obscenity is also frequently defined in state statutes and local ordinances using guidelines established in the Supreme Court’s 1973 *Miller v. California* decision. “Harmful to minors” is defined in CIPA. It takes the federal definition of obscenity and applies it to minors under age 17. (Note that only a court can legally determine if an image is obscene. However, librarians are placed in a difficult position because they often must make this determination to enforce the library’s internet safety policy and to comply with CIPA.)

(3) *A library must hold a public hearing:*

- Libraries must hold a public meeting or hearing, which can be part of a regular board meeting, to allow comment on its internet safety policy. (Be certain to save documentation of the meeting.)

Q: What computers must be filtered?

A: CIPA states that a library must have a filter in place “with respect to *any of its* computers with internet access” (emphasis added). This includes library owned computers in both public and administrative areas. Most interpret the phrase “its computers” to mean CIPA applies only to library owned computers. On several occasions ALA has asked the FCC to confirm that CIPA does not apply to patron owned devices. While the FCC has not taken a position on this, it has been the ALA’s long-standing position—which the FCC is aware of—that patron owned devices are not subject to CIPA’s filtering requirement. Thus, whether a library decides to filter patron owned devices is a local decision.

We strongly oppose the broader interpretation that the phrase “its computers” means that CIPA covers any device, regardless of ownership. —*ALA comments to the FCC, Sept. 2013*

Q: Under what circumstances or conditions can the filter be disabled?

A: The disabling process is an important factor when evaluating any filtering software—in part because the Supreme Court’s decision declaring CIPA to be constitutional placed considerable emphasis on disabling to avoid First Amendment harm from over-blocking. The law states that any adult (age 17 and older) can request the filter be disabled for any lawful purpose. The Court’s ruling supported the position that patrons simply have to request unfiltered access with no explanation needed. Libraries have considerable latitude in this area, which has resulted in crafting disabling scenarios that are of minimal burden to staff and patrons. For example, one scenario is to allow adult patrons to select unfiltered access by choosing this option on the screen or via a card reader and electronically authenticating this action via the library’s management system.³ It is important for a library’s internet safety policy to address the process by which patrons can request unfiltered access.

Q: How effective does the filter have to be?

A: The law states that the filter must *protect* against images referenced in CIPA. No filter is 100% effective in *preventing* all such access. In its CIPA regulations, the FCC declined to further define the filtering requirements or to adopt any type of definition or certification on how effective a filter must be. The FCC also declined to require libraries to track how many times patrons attempted to access a site blocked by the filter.

To meet our goal of minimizing the burden on libraries we will not adopt a filter effectiveness requirement. —*FCC CIPA regulations, April 2001.*

Q: What are the legal implications if the filter fails?

A: CIPA does not provide a venue for patrons to take legal action directly against the library. Rather, patrons can file a complaint with the FCC if they think the library’s filter is not working properly. The FCC can then conduct an investigation and require the library to reimburse its E-rate discounts for the time it was found out of compliance. E-rate audits can also result in a finding of non-compliance.

Q: Where can I find more information on the E-rate program, CIPA and filtering?

A: For general E-rate information see the Schools and Libraries Division’s (SLD) website at <http://www.usac.org/sl/>. For CIPA and filtering information, ALA’s Office for Intellectual Freedom is an excellent source. Its website at <http://www.ala.org/advocacy/intfreedom/filtering> has links to over thirty additional resources. For CIPA, see also the SLD site at <http://www.usac.org/sl/applicants/step05/cipa.aspx>.

³ For more disabling scenarios see the 2017 publication *Guidelines to Minimize the Negative Effects of Internet Content Filters on Intellectual Freedom* at http://www.ala.org/advocacy/intfreedom/filtering/filtering_guidelines.