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CHILDREN'S INTERNET PROTECTION: A SUMMARY

Under a new federal law, passed as part of the Omnibus Consolidated Appropriations legislation at the end of the last Congress, schools and libraries that take advantage of E-rate discounts or receive certain funding under the Museum and Library Services Act or the Elementary and Secondary Education Act will have to adopt an Internet safety policy that incorporates use of filtering software on computers with Internet access.

New Requirements. The statute provides that no funds received under Section 224 of the Museum and Library Services Act (LSTA state grants) or Title III of the Elementary and Secondary Education Act can be used to purchase computers for Internet access or pay for Internet access, and no E-rate discounts can be used for Internet access, Internet service, or internal connections, unless the schools and libraries certify:

- That they have adopted and implemented an Internet safety policy, which includes operation of a "technology protection measure" that "blocks or filters Internet access to visual depictions that are"—
  - Obscene;
  - Child pornography; or
  - Harmful to minors (in the case of use by minors).
- That they are enforcing the operation of the technology protection measure during use of their computers

Additionally, those schools and libraries receiving E-rate discounts must:

- Address in their Internet safety policy—
  - Access by minors to "inappropriate matter" on the Internet (the determination of what matter is "inappropriate for minors" shall be made by the school board, local educational agency, or library);
  - Safety and security of minors when using e-mail, chat rooms, and other forms of direct electronic communication;
  - Unauthorized access, including hacking and other unlawful online activities by minors;
  - Unauthorized disclosure of personal identification information of minors; and
  - Measures designed to restrict minors' access to harmful materials.

- Provide notice and hold at least one hearing or meeting on the proposed Internet safety policy.

Filtering or Blocking. The statute presumes the workability of technology protection measures, although there appears to be widespread agreement that no measure has yet been developed that can block only prohibited material without also denying the user access to material to which access is protected by the First Amendment. Nonetheless, the new law requires that affected schools and libraries block or filter all access to prohibited visual depictions. (Text is not addressed by the filtering/blocking requirement.) The technology protection measure may be disabled "to enable access to bona fide research or other lawful purposes," although there is no suggestion of what is meant by these terms, nor how school or libraries should make decisions to apply them. For ESEA and MLSA, no age specification is made; however provisions pertaining to the E-rate specify that disabling may occur only during adult use.

The required certification is not only that the technology protection measure be in place, but also that the school or library "is enforcing the operation" of such measure. Despite its title, the law applies to both minors and adults, although adults are not restricted in their access to material that is "harmful to minors."

Timing and Implementation. The new statute takes effect 120 days after enactment, or on April 20, 2001. Before this effective date, the Federal Communications Commission, the agency that administers the E-rate program, must develop regulations governing application of the law to E-rate recipients. Responsibility for implementation as to schools not receiving E-rate discounts is placed in the Department of Education, while responsibility as to libraries not receiving E-rate discounts is placed in the Institute of Museum and Library Sciences; neither of these agencies plans (as of early January) to adopt regulations, but will issue guidance instead.

Libraries and schools will not be required to make duplicate or multiple certifications to different agencies. Certification of compliance by affected schools and libraries not receiving E-rate discounts must be made in applications filed "for the next program funding year" after April 20th. Thus, timing will differ from program to program, and even from state to state where state intermediary agencies provide funding on different cycles. Guidance is expected from the Department of Education and the IMLS on precisely when the certifications must be made and what form the certification will take. Details regarding who makes the certification and to whom will also have to be developed to cover funding of consortia and state agencies that disburse federal funds.

The FCC staff has informally suggested that certifications under the E-rate program provisions will be required within 120 days after July 1, 2001, as appears to be required by the statute.

In each of the affected programs, certification is phased in. In the first program year, the library or school must certify that it is undertaking actions to put in place an Internet safety policy that meets requirements. In the second program year, libraries and schools must certify that they actually have the policy with the required technology in place. Therefore, in many cases, the actual installation and use of a technological protection measure may not need to be in place until some time in 2002 or beyond.

Additional Provisions. The new law specifically authorizes that funds available under ESEA (section 3134) and MLSA (section 224) may be used for the acquisition of technology protection measures required by the act. However, no new or additional funding is authorized.

Another study of children's online safety is directed: NTIA must initiate within 18 months of April 20th a notice and comment proceeding to evaluate whether currently available technology protection measures adequately address the needs of educational institutions, to evaluate local Internet safety policies, and to make recommendations. Federal agencies are, however, specifically prohibited from reviewing or interceding in any way in the process under which local communities develop standards for what material is "inappropriate to minors."

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