

iPads, Mobile Devices, and CIPA Compliance: an Update

An Infopeople Webinar

October 16, 2014

Mary Minow
J.D., A.M.L.S.



Legal Disclaimer

- Legal information
- **Not** legal advice!



iPads, Mobile Devices, and CIPA Compliance: *an Update*

Children's Internet Protection Act

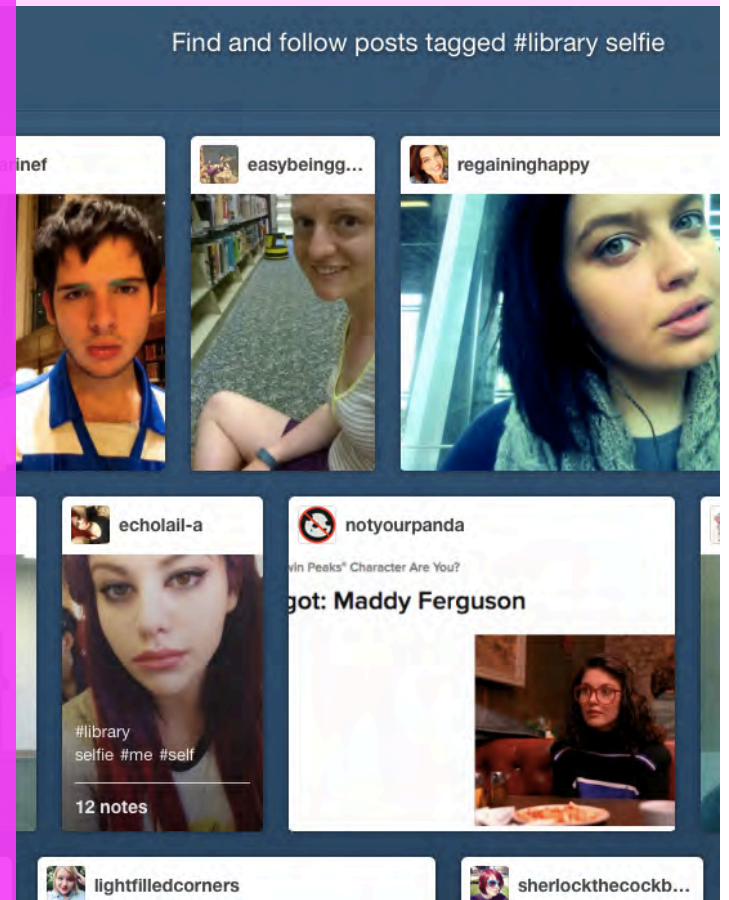
Selfies: Photos, Videos, Recordings

Library Devices:

Pre-loaded content

Disability access

User agreements





Children's Internet Protection Act (CIPA)

- Legal requirements
 - schools versus public libraries
- Looking at porn on your own device
- CIPA 10 years later report

Big Picture

Alaska Library Association Conference
February 27 - March 2, 2014
Anchorage, AK



E-rate Reforms: Into The Future With E-rate 2.0

"I have seen the future and it works."

Bob Bocher
Fellow, ALA Office for Information Technology
Policy; OWL Project Consultant
(robert.bocher@gmail.com)

ALA's E-rate Reform Proposals

Goal #1: Increase broad-band capacity, lower cost

- Need permanent increase in funding cap
- Have temporary \$\$ to build-out high-capacity BB
- Lower barriers to dark/lit fiber and ownership
- Develop bandwidth targets or benchmarks

Goal #2 : Maximize cost-effectiveness of E-rate funds

- Phase-in elimination of any eligible services
- Make easier access to cost data
- FCC enforce Lowest Corresponding Price (LCP)

Goal #3: Streamline E-rate program administration

- Use local/state procurement processes
- Expedite minimal funding requests
- Do not add unnecessary complexity and reporting requirements

7

<http://akla.org/anchorage2014/files/2014/01/AkLA-2014-E-rate-Program-Final.pdf>

E-RATE CENTRAL

[Home](#)[E-Rate Consulting](#)[Application Tips](#)[Forms Page](#)[State Information](#)

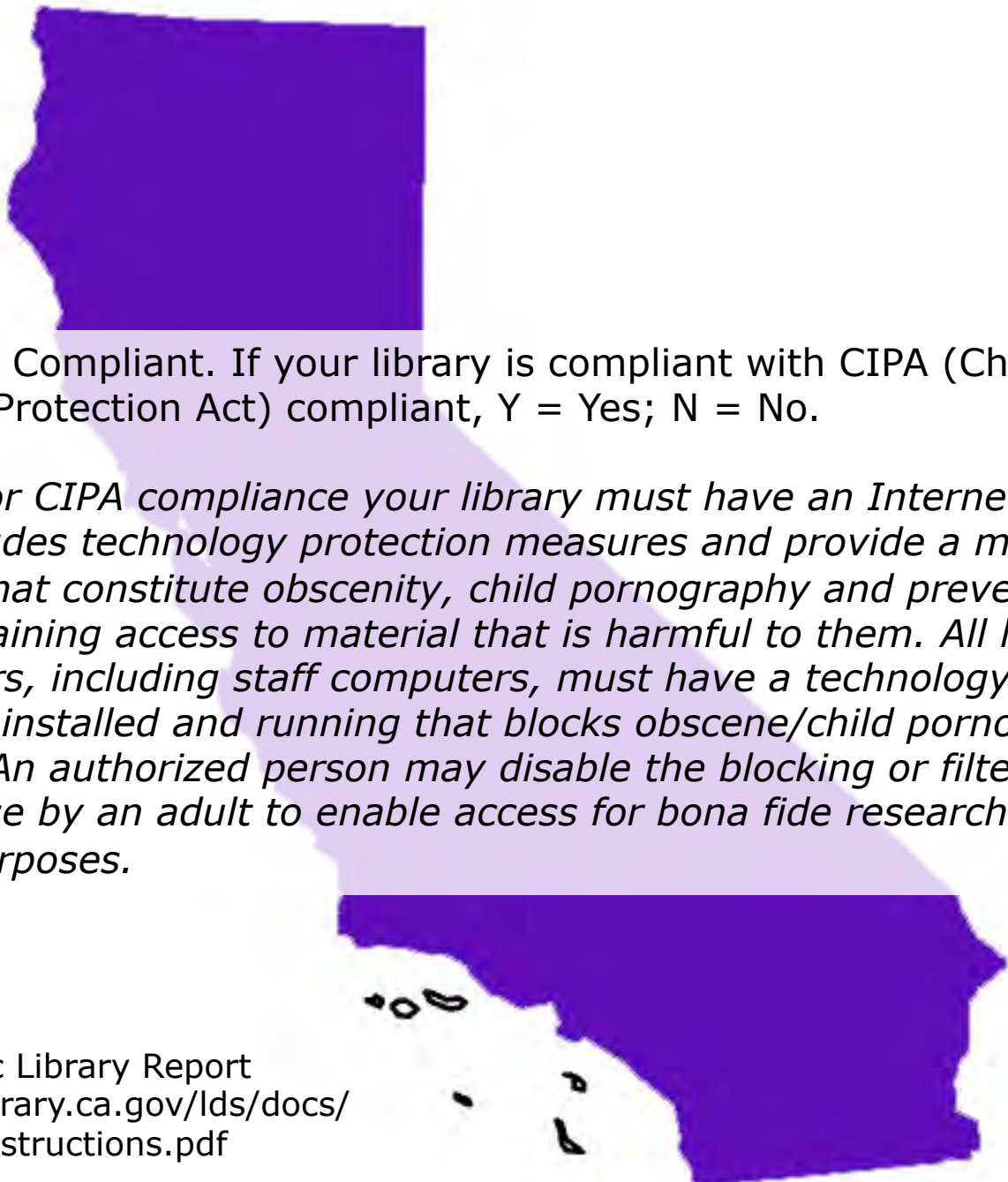
ate E-rate Coordinator Listing

National Listing of State E-rate Coordinators

*Type: S = Schools, L = Libraries, B = Both Schools and Libraries

State	Type*	Name / Address	Phone / Fax / E-Mail
CA	L	Rushton Brandis Technology Consultant California State Library 900 N Street, Suite 500 P.O. Box 942837 Sacramento, CA 94237-0001	Tel: (916) 653-5471 Fax: (916) 653-8443 E-Mail: rushton.brandis@library.ca.gov
CA	S	Larry Hiuga Information Systems Analyst California Department of Education Educational Technology Office 1430 N St. Suite 6308 Sacramento, CA 95814	E-Mail: e-rate@cde.ca.gov

<http://e-ratecentral.com/us/stateCoord.asp>



858 CIPA Compliant. If your library is compliant with CIPA (Children's Internet Protection Act) compliant, Y = Yes; N = No.

NOTE: For CIPA compliance your library must have an Internet safety policy that includes technology protection measures and provide a means to block images that constitute obscenity, child pornography and prevent minors from obtaining access to material that is harmful to them. All library computers, including staff computers, must have a technology protection measure installed and running that blocks obscene/child pornography images. An authorized person may disable the blocking or filtering measure during use by an adult to enable access for bona fide research or other lawful purposes.

Mobile Devices and CIPA

23. Some E-rate recipients have sought guidance regarding the potential application of CIPA requirements to the use of portable devices owned by students and library patrons, such as laptops and cellular telephones, when those devices are used in a school or library to obtain Internet access that has been funded by E-rate. We recognize that this is an increasingly important issue, as portable Internet access devices proliferate in schools and libraries. We believe it may be helpful to clarify the appropriate policies in this area, and intend to seek public comment in a separate proceeding.

https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-125A1.pdf

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism))
)
A National Broadband Plan for Our Future) GN Docket No. 09-51
)
)

REPORT AND ORDER

Adopted: August 10, 2011

Released: August 11, 2011

By the Commission:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
III. DISCUSSION.....	5
A. Protecting Children in the 21 st Century Act Revisions.....	5
B. Other Proposed Rule Revisions.....	9
IV. PROCEDURAL MATTERS.....	26
A. Final Regulatory Flexibility Analysis.....	26
B. Paperwork Reduction Act Analysis.....	27
V. CONGRESSIONAL REVIEW ACT.....	29
VI. ORDERING CLAUSES.....	30
APPENDIX A: Final Rules	
APPENDIX B: Final Regulatory Flexibility Analysis	
APPENDIX C: Comments and Reply Comments in Response to the <i>CIPA NPRM</i>	

Don't block social media (per se)
(para 17)

Help students “participate in online social networks where people from all over the world share ideas, collaborate, and learn new things.”

Declaring such sites categorically harmful to minors would be inconsistent with the Protecting Children in the 21st Century Act's focus on “educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms, and cyberbullying awareness and response.”

Schools only



28. In this present document, we require any school receiving E-rate funding to certify that its Internet safety policy provides for the education of minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness.⁸² We have assessed the effects of this new certification requirement and find that it will not significantly impact the burden on small business. Congress adopted this new certification requirement to promote online safety education in schools.⁸³ We also codify the existing statutory requirement that schools and libraries make Internet safety policies available upon request by the Commission.⁸⁴ We have assessed the effects of adding this requirement to our rules and find that it will not significantly impact the burden on small business because it was an already existing statutory requirement with which schools and libraries have had to comply.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)

NOTICE OF PROPOSED RULEMAKING

Adopted: July 19, 2013

Released: July 23, 2013

Comment Date: September 16, 2013

Reply Comment Date: October 16, 2013

A. The Children’s Internet Protection Act

271. Stakeholders have sought clarification on the applicability of CIPA to devices not owned by E-rate recipients but using E-rate supported networks and to off-premises use of devices owned by schools and libraries.³⁵⁵ We seek input from interested parties about the measures schools and libraries are taking and need to take to comply with CIPA when they allow third-party devices to connect to their

E-rate supported networks.³⁵⁶ Also in response to stakeholder concerns, we seek comment on what steps schools and libraries are taking and must take to ensure that they are not violating CIPA when they provide employees, students and library patrons with portable, Internet-enabled devices that can be used off-premises.³⁵⁷

VI. Other Outstanding Issues.....	30
a. The Children’s Internet Protection Act.....	30
b. Identifying Rural Schools and Libraries.....	30
c. Addressing Changes to the National School Lunch Program.....	31
d. Wireless Community Hotspots.....	31
e. Procedures for National Emergencies.....	32

The Children’s Internet Protection Act

Our position on CIPA compliance is straight-forward and we believe it is fully supported by the language in the law. In brief, we believe that— when read in the context of the law—the phrase “any of *its* computers with Internet access” [emphasis added] clearly refers to school or library owned devices (§274). Therefore, CIPA applies to devices owned by the school or library but does not apply to devices owned by students, staff or library patrons. If libraries or schools want to filter devices they do not own, that is a local decision but is not a requirement of the law.⁵² We strongly oppose the broader interpretation of this key phrase that CIPA covers any device, regardless of ownership (§274).

Sept. 13, 2013

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: July 11, 2014

Released: July 23, 2014

Comment Date: September 15, 2014

Reply Comment Date: September 30, 2014

**Still
waiting...**

[http://transition.fcc.gov/Daily_Releases/
Daily_Business/2014/db0723/FCC-14-99A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0723/FCC-14-99A1.pdf)

State Laws



The screenshot shows the NCSL website header with the logo and navigation menu. The main content area is titled 'CHILDREN AND THE INTERNET' and features a sub-section 'LAWS RELATING TO FILTERING, BLOCKING AND USAGE POLICIES IN SCHOOLS AND LIBRARIES'. Below this, there is a date 'Last update: Jan. 9, 2014' and a list of links: 'Overview | Federal Children's Internet Protection Act (CIPA) | U.S. Supreme Court Ruling on CIPA | State Filtering / Blocking Laws'. A section titled 'Overview of State Laws' contains a paragraph of text.

CHILDREN AND THE INTERNET

LAWS RELATING TO FILTERING, BLOCKING AND USAGE POLICIES IN SCHOOLS AND LIBRARIES

Last update: Jan. 9, 2014

[Overview](#) | [Federal Children's Internet Protection Act \(CIPA\)](#) | [U.S. Supreme Court Ruling on CIPA](#) | [State Filtering / Blocking Laws](#)

Overview of State Laws

Twenty-four states have Internet filtering laws that apply to publicly funded schools or libraries. The majority of these states simply require school boards or public libraries to adopt Internet use policies to prevent minors from gaining access to sexually explicit, obscene or harmful materials. However, some states also require publicly funded institutions to install filtering software on library terminals or school computers.

<http://www.ncsl.org/research/telecommunications-and-information-technology/state-internet-filtering-laws.aspx>



California

Public libraries with state funds must have policy on Internet access by children, by majority vote of governing board.

Policy must be available to the public.

18030.5. (a) Every public library that receives state funds pursuant to this chapter and that provides public access to the Internet shall, by a majority vote of the governing board, adopt a policy regarding access by minors to the Internet by January 1, 2000.
(b) Every public library that is required to adopt a policy pursuant to subdivision (a) shall make the policy available to members of the public at every library branch.

Calif. Educ. Code Sect. 18030.5 <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=18001-19000&file=18030-18032>



Sample Mobile Policy

Free wireless access is available for Library patrons to use with their own personal notebooks, laptops and mobile devices. Use is governed by the Library's internet use policy.

Use of the Library's wireless network is entirely at the risk of the user, and the Library disclaims all liability for loss or damages.

What about man with his
own laptop or mobile
device?

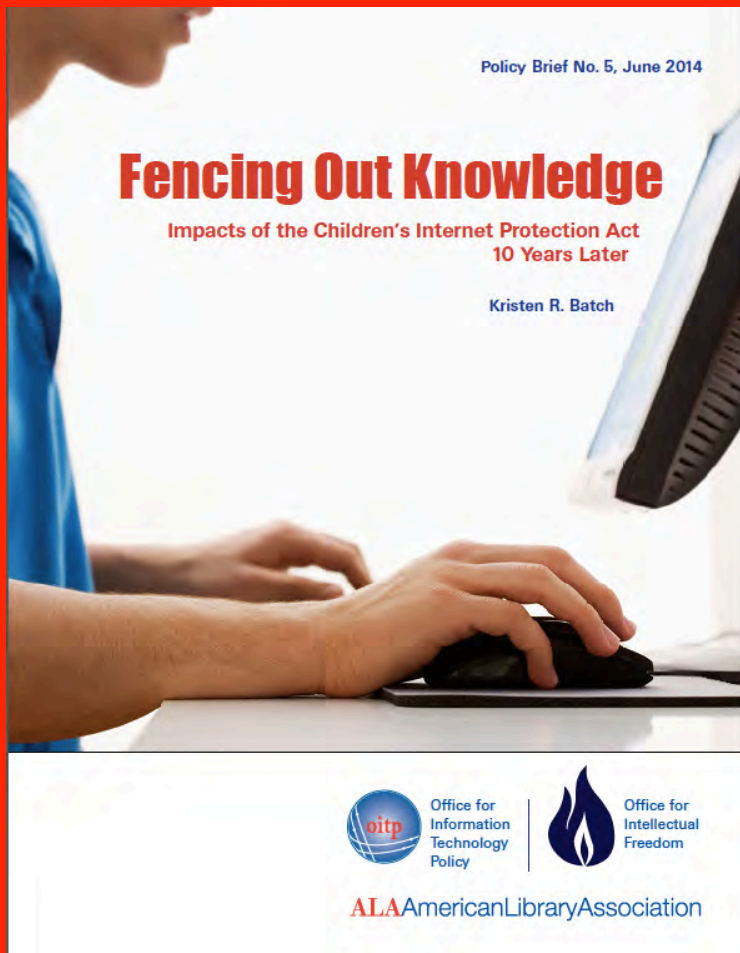


Child Pornography is
ILLEGAL

Any device

U.S. v. Talley, 392 Fed. App' x. 129 (4th Cir. 2010)

CIPA: Ten Years Later



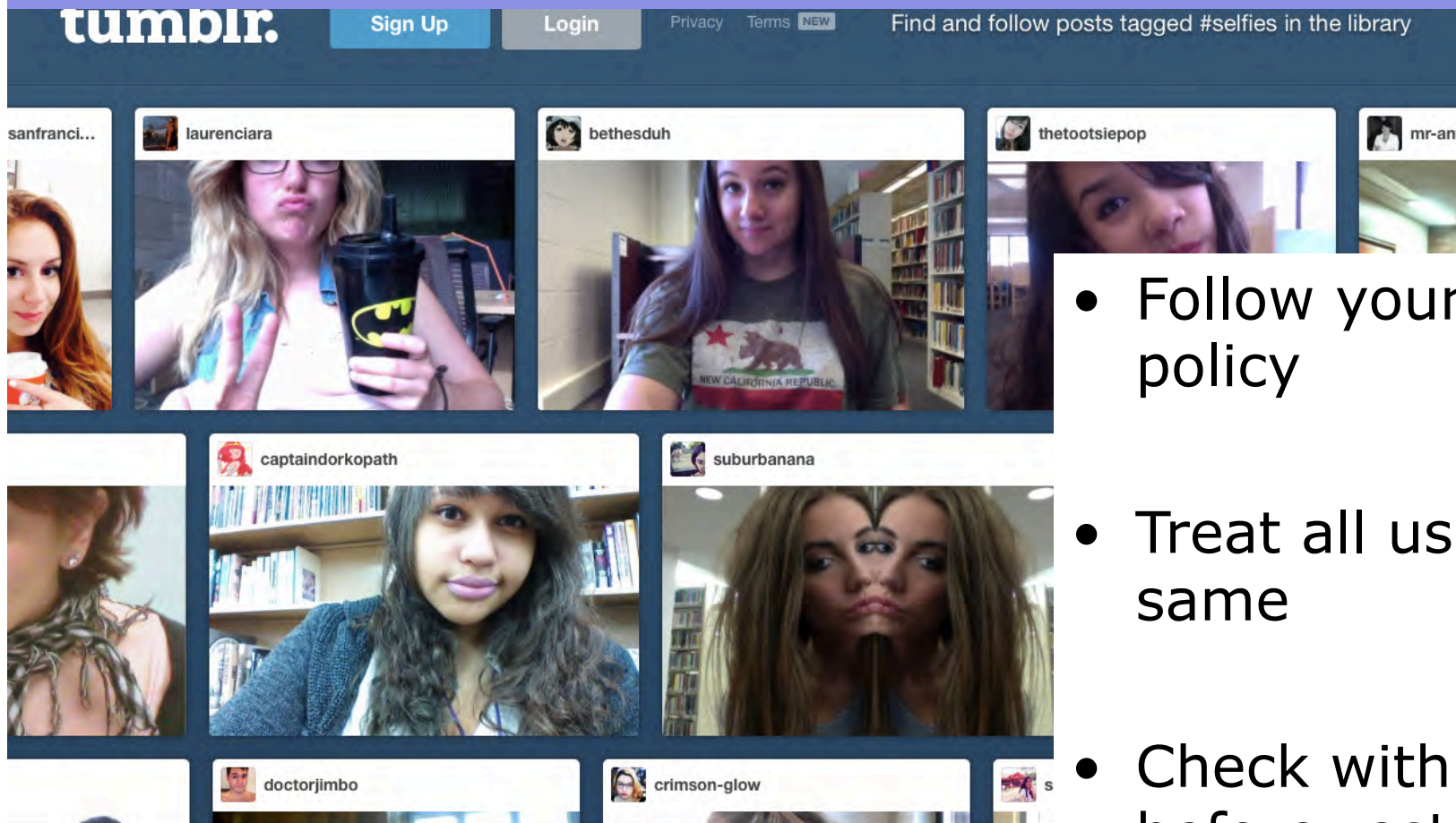
Fencing Out Knowledge

Impacts of the Children's Internet Protection Act 10 Years Later

Executive Summary	5-7
Introduction	9-10
CIPA and the Expanding Scope and Growing Social Acceptance of Filtering	10-14
Legal Requirements of CIPA	10
The Expansion of Filtering	11
Limits of Filtering as a Policy Solution	13
Factors Contributing to Over-implementation of CIPA	14-18
Misinterpretations of the Law	14
Different Perceptions of Filtering	14
Limitations of Filtering Software	16
Technical Limitations	16
Performance Limitations	17
Other Limitations	18
Implementation of CIPA in Public Libraries	18-21
The Library Mission and Growing Demand for Library Services	18
Impact on Patrons' Information Needs	20
Implementation of CIPA in Schools	21-27
Overreach of Filtering under CIPA	21
Educational Consequences for Students	22
Social Consequences for Students	26
School Librarians: An Underused Resource	26
Unequal Impact of CIPA	27-28
Conclusions	28-30
Recommendations	31-32
Appendix	33-34
Acknowledgments	35

http://connect.ala.org/files/cipa_report.pdf

Selfies: Photos, Videos and Recordings



- Follow your library policy
- Treat all users the same
- Check with lawyer before restricting photos

<http://www.tumblr.com/tagged/selfies-in-the-library>

Generally, Photographers Do Not Need Consent in Public Places

Taking the Photo



[herzogbr](#)

Attribution-Noncommercial-Share Alike 2.0 Generic
www.flickr.com/photos/herzogbr/1658397241/

Cal. Civ. Code § 3344(d)

Invasion of Privacy?

Google street view lawsuit

- Court: No invasion of privacy
- No disclosure or private facts

Test:
highly offensive to
reasonable person



Boring v Google, 362 F. App'x 273 (3d Cir. 2010)



Photography/Filming

[download / print](#)

TSA does not prohibit the public, passengers or press from photographing, videotaping or filming at security checkpoints, as long as the screening process is not interfered with or slowed down. We do ask you to not film or take pictures of the monitors. While the TSA does not prohibit photographs at screening locations, local laws, state statutes, or local ordinances might.

Taking photographs may also prompt airport police or a TSA official to ask what your purpose is. It is recommended that you use the Talk To TSA program on tsa.gov to contact the Customer Support Manager at the airport to determine its specific policy. Or, if you are a member of the press, you should contact the TSA Office of Public Affairs.

Latest revision: 12 March 2014

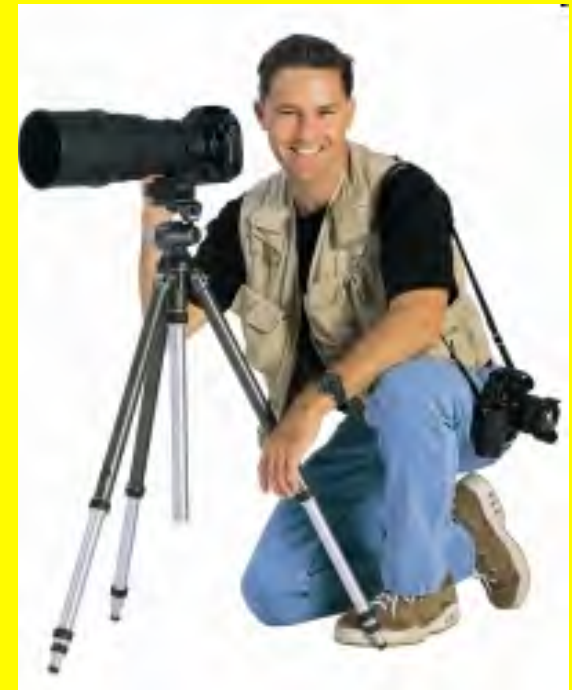
<http://www.tsa.gov/pressroom-channel/photographyfilming>

Does your library still have a policy against commercial photography?

Main historical purpose was large equipment disruption

No longer meaningful...
blogs, ads...

Use conduct policy



Generally, Photographers Do Not Need Consent in Public Places

Taking the Photo

Using the Photo



[herzogbr](#)

Attribution-Noncommercial-Share Alike 2.0 Generic
www.flickr.com/photos/herzogbr/1658397241/

newsworthiness:

"a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required."

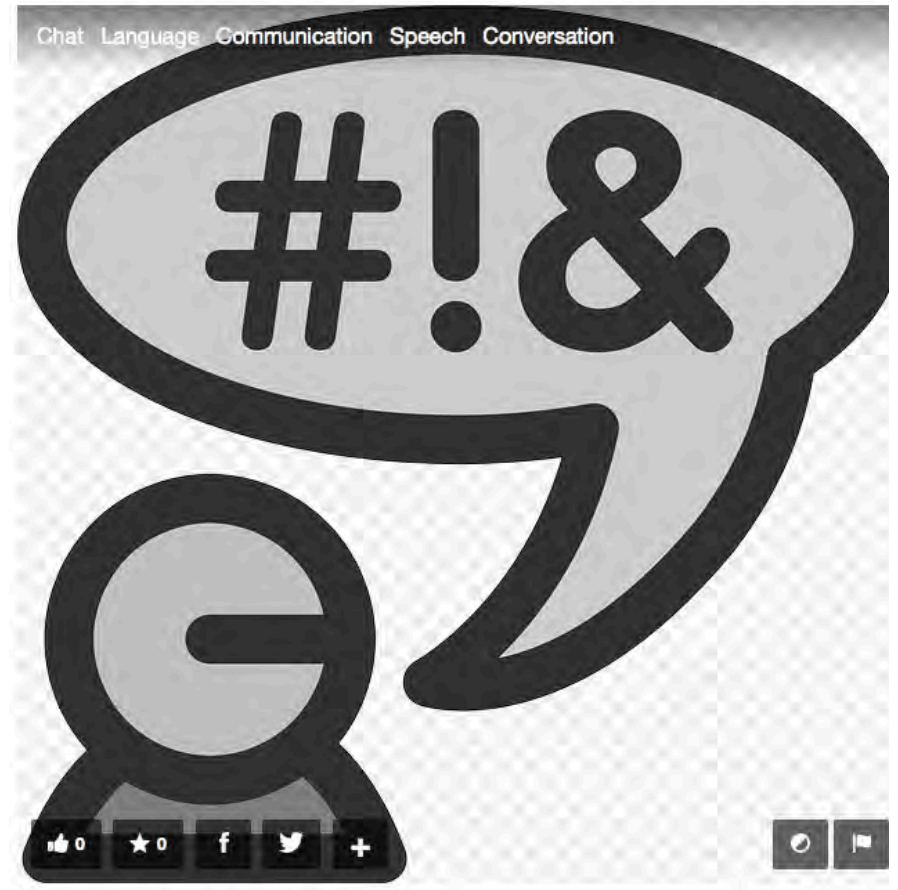
Cal. Civ. Code § 3344(d)

What About Bad Uses?

Q: What if photo/video/
recording is critical of
library or government

Really derogatory?

A: First Amendment right.



California law forbids some *uses* of photos

Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of ***advertising or selling***, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent ... shall be liable for any damages sustained.

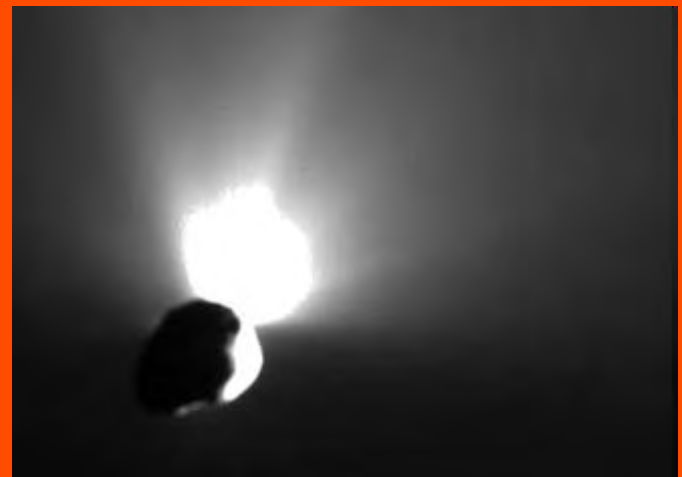
Cal. Civ. Code § 3344(a)

No Photography

Need to justify. See attorney.

Some justifications:

No Flash (bothers users)



Library Responsibility for Patron Privacy?

Expectation of privacy?



Public restrooms and upskirting

Calif. Penal Code 647(j)(2) **CALL POLICE**



Library records

Calif. Govt Code 6267

–Possibly at closed children's programs



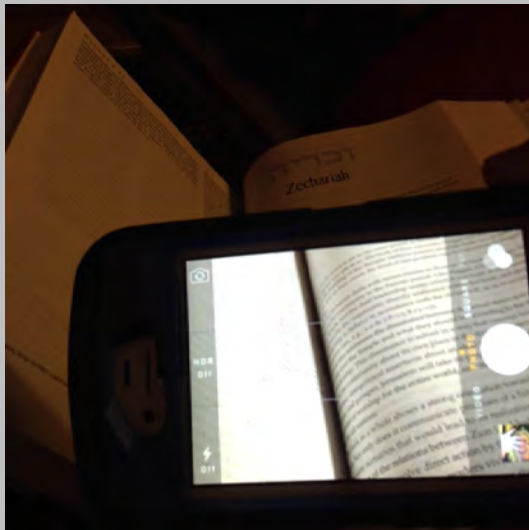
mere
presence in
library
not
protected



Copyright Issue



Library is not the copyright police



Could be perfectly legal

... But Library Must Honor Contracts re Exhibits, Programs

Protect commercial interest of
exhibitors, performers

... How to enforce?



(don't sign contracts you can't honor)

For discussion of On the Road exhibit, see [williampatry.blogspot.com/
2006/02/on-road-again.html](http://williampatry.blogspot.com/2006/02/on-road-again.html)

Sample Library Policy

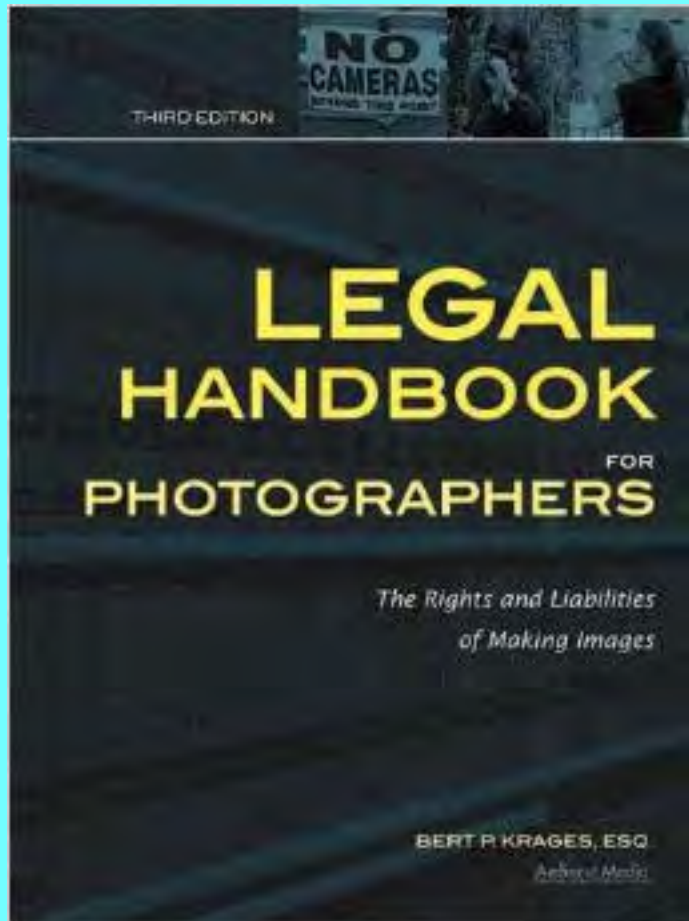
Filming and photography is allowed if it does not interfere with the delivery of library services.

Persons filming or taking photographs on library premises are responsible for gaining all necessary permissions to use the photos.

Taking photos or videos of persons in the library who ask not to be photographed is unacceptable under the Library Code of Conduct.

Library staff may terminate any photo session that violates Library policies or appears to compromise public safety or security.

Further Information



Legal Handbook for Photographers

Bert Krages, Esq. (Amherst Media: 2012)

Esp. sections on
photography in public
places

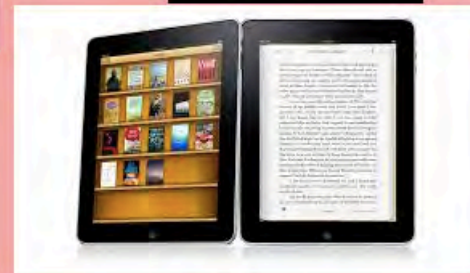
www.krages.com/lhp.htm

Library Mobile Devices: Pre-loaded Content, Disability Access, User Agreements

Licenses



Library Licenses



Consumer Licenses

Library Use: 1 copy : 1 device

Library Mobile Devices: Pre-loaded Content, Disability Access, User Agreements

Essentially – must make material available in more than one mode

If video, must have text, or make it available reasonably soon

Library Ebook Law

Disability, Privacy, First Amendment

DISABILITY ACCESS

Brown v. Free Library of Philadelphia

Nook Lending Program
Federal funds



Settlement: purchase only fully accessible mainstream devices

SETTLEMENT Oct 23, 2012

"Fully accessible"

a blind individual needs to access same information, same transactions, and same services

as a non-disabled individual

with substantially equivalent ease of use

<http://docs.justia.com/cases/federal/district-courts/pennsylvania/paedce/2:2012cv02373/461996/14/>

See also Dear Colleague Letter <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.html>

Similar Settlement: Sacramento Public Library

No additional inaccessible content



Provide text-to-speech and access to menus and controls

May require users to attest eligibility

May not require doctor note

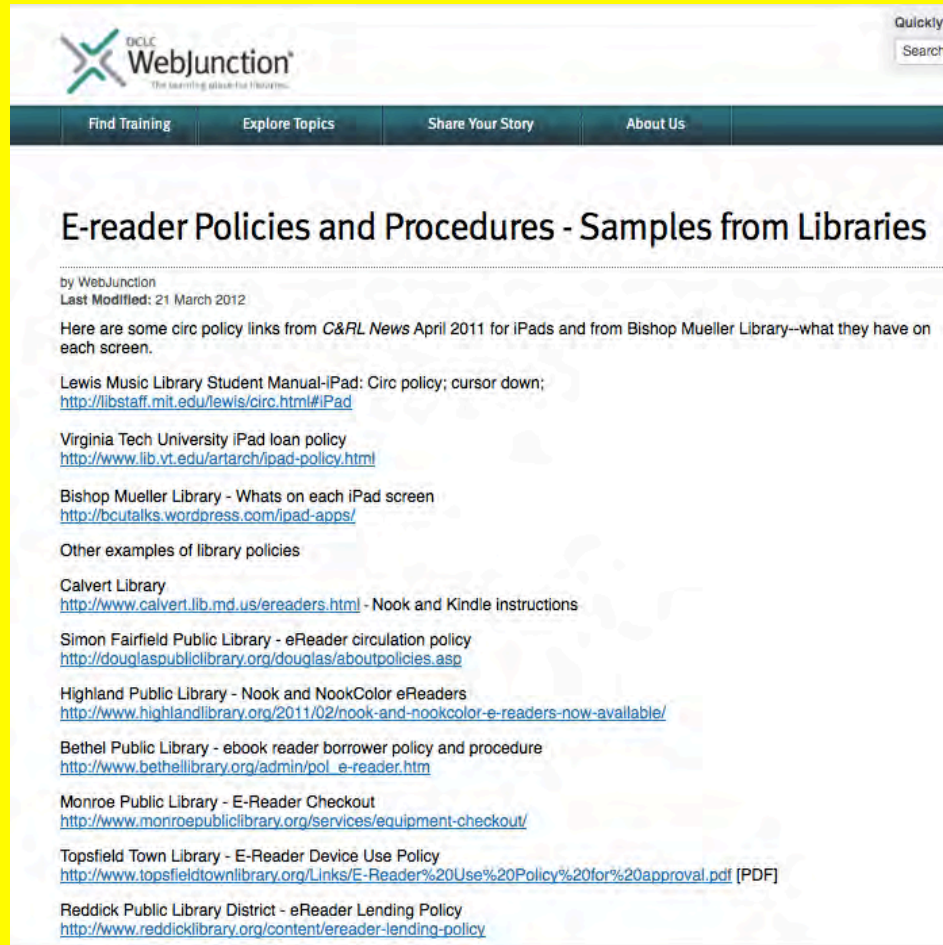
[See also 28 C.F.R. Sect. 35.138(h)(2)]

http://www.ada.gov/sacramento_ca_settle.htm August 28, 2012

See also IMLS Advisory: E-book Reader Lending Programs

http://pld.dpi.wi.gov/files/pld/pdf/ebook_guidance.pdf

User Agreements



The screenshot shows a webpage from WebJunction. At the top left is the WebJunction logo with the tagline 'The learning place for libraries.' To the right is a search box. Below the logo is a navigation menu with four items: 'Find Training', 'Explore Topics', 'Share Your Story', and 'About Us'. The main content area features the article title 'E-reader Policies and Procedures - Samples from Libraries' in a large, bold font. Below the title, it says 'by WebJunction' and 'Last Modified: 21 March 2012'. The article text begins with 'Here are some circ policy links from C&RL News April 2011 for iPads and from Bishop Mueller Library--what they have on each screen.' It then lists several library policies with their respective URLs: Lewis Music Library Student Manual-iPad; Virginia Tech University iPad loan policy; Bishop Mueller Library - Whats on each iPad screen; Calvert Library - Nook and Kindle instructions; Simon Fairfield Public Library - eReader circulation policy; Highland Public Library - Nook and NookColor eReaders; Bethel Public Library - ebook reader borrower policy and procedure; Monroe Public Library - E-Reader Checkout; Topsfield Town Library - E-Reader Device Use Policy; and Reddick Public Library District - eReader Lending Policy.

Quickly find
Search W

Find Training Explore Topics Share Your Story About Us

E-reader Policies and Procedures - Samples from Libraries

by WebJunction
Last Modified: 21 March 2012

Here are some circ policy links from *C&RL News* April 2011 for iPads and from Bishop Mueller Library--what they have on each screen.

Lewis Music Library Student Manual-iPad: Circ policy; cursor down;
<http://libstaff.mit.edu/lewis/circ.html#iPAd>

Virginia Tech University iPad loan policy
<http://www.lib.vt.edu/artarch/ipad-policy.htm>

Bishop Mueller Library - Whats on each iPad screen
<http://bcutalks.wordpress.com/ipad-apps/>

Other examples of library policies

Calvert Library
<http://www.calvert.lib.md.us/ereaders.htm> - Nook and Kindle instructions

Simon Fairfield Public Library - eReader circulation policy
<http://douglaspubliclibrary.org/douglas/aboutpolicies.asp>

Highland Public Library - Nook and NookColor eReaders
<http://www.highlandlibrary.org/2011/02/nook-and-nookcolor-e-readers-now-available/>

Bethel Public Library - ebook reader borrower policy and procedure
http://www.bethelibrary.org/admin/pol_e-reader.htm

Monroe Public Library - E-Reader Checkout
<http://www.monroepubliclibrary.org/services/equipment-checkout/>

Topsfield Town Library - E-Reader Device Use Policy
<http://www.topsfieldtownlibrary.org/Links/E-Reader%20Use%20Policy%20for%20approval.pdf> [PDF]

Reddick Public Library District - eReader Lending Policy
<http://www.reddicklibrary.org/content/ereader-lending-policy>

http://www.webjunction.org/documents/webjunction/E_045_reader_Policies_and_Procedures_045_Samples_from_Libraries.html

iPads, Mobile Devices, and CIPA Compliance: *an Update*

Children's Internet Protection Act

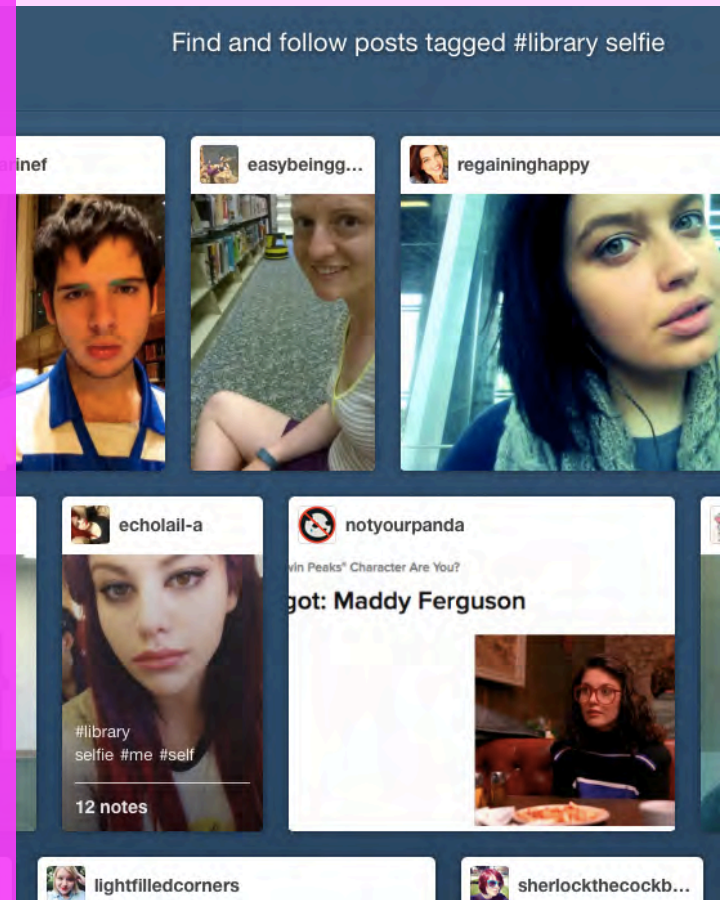
Selfies: Photos, Videos, Recordings

Library Devices:

Pre-loaded content

Disability access

User agreements



Questions?

Thank you.

Mary Minow
consult@librarylaw.com
Twitter @librarylaw



Infopeople webinars are supported in part by the U.S. Institute of Museum and Library Services under the provisions of the Library Services and Technology Act, administered in California by the State Librarian. This material is licensed under a Creative Commons 3.0 Share & Share-Alike license. Use of this material should credit the author and funding source.