

iPads, Mobile Devices and CIPA Compliance: an Update

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


An Infopeople Webinar
October 16, 2014

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Legal Disclaimer

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

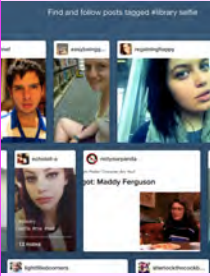


iPads, Mobile Devices, and CIPA Compliance: an Update

Children's Internet Protection Act

Selfies: Photos, Videos, Recordings

Library Devices:
Pre-loaded content
Disability access
User agreements



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iPads, Mobile Devices and CIPA Compliance: an Update

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

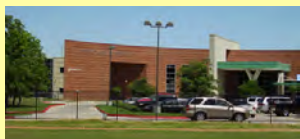
<http://akla.org/anchorage2014/files/2014/01/AkLA-2014-E-rate-Program-Final.pdf>

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

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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.¹⁵⁷ 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.¹⁵⁸ We also codify the existing statutory requirement that schools and libraries make Internet safety policies available upon request by the Commission.¹⁵⁹ 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.

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

Federal Communications Commission FCC 13-100

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

In the Matter of
Modernizing the E-rate
Programs for Schools and Libraries

))
)) WC Docket No. 13-184
))

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.¹⁵⁷ 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.¹⁵⁸ 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.¹⁵⁹

https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-100A1.pdf

ALA American Library Association

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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.¹⁵² We strongly oppose the broader interpretation of this key phrase that CIPA covers any device, regardless of ownership (§274).

Sept. 13, 2013

<http://apps.fcc.gov/ecfs/document/view?id=7520944024>

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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

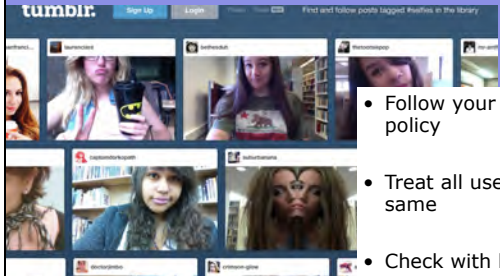



http://connect.ala.org/files/cipa_report.pdf

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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



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

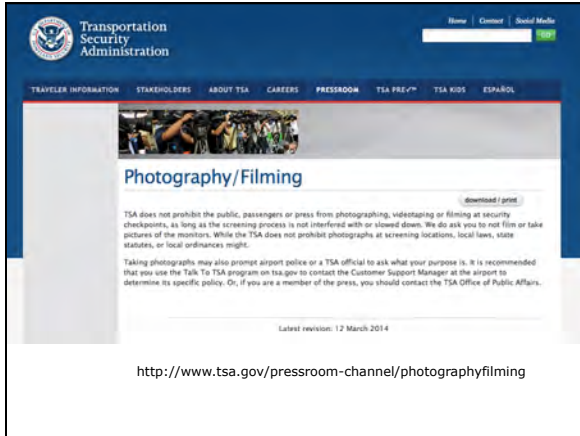
Test:
highly offensive to reasonable person



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

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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



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)

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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.

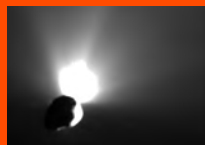
Cal. Civ. Code § 3344(a)

No Photography

Need to justify. See attorney.

Some justifications:

No Flash (bothers users)



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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

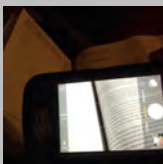
✗ mere presence in library not protected



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

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Sample Library Policy

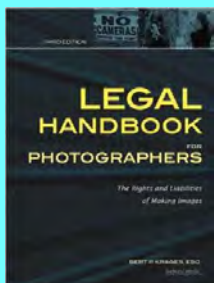
Filming and photography is allowed if it does not interfere with the delivery of library services.

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



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**Library Mobile Devices:
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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



"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

Settlement: purchase only fully accessible mainstream devices

SETTLEMENT Oct 23, 2012

<http://docs.iustia.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

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User Agreements

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

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Questions?

Thank you.

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