COMPLYING WITH THE
CHILDREN'S INTERNET PROTECTION ACT
WITH PROGRAM YEAR 2006 FUNDS

I. INTRODUCTION

1. The Institute of Museum and Library Services establishes these guidelines to ensure that the agency's implementation of the Children's Internet Protection Act (CIPA) complies with the recent decision of the United States Supreme Court.[1] **Under CIPA, State Library Administrative Agencies (SLAA) must assure the Federal Government that no funds will be made available for public libraries and public elementary and secondary school libraries, that do not receive E-rate discounts, to purchase computers to access the Internet or pay for the direct costs of accessing the Internet unless the libraries have certified that they have Internet safety policies and technology protection measures, e.g., software filtering technology, in place. State Library Administrative Agencies must collect certifications from libraries subject to CIPA that apply to the States for Library Services and Technology Act (LSTA) funding.** Libraries that receive services at discount rates under section 254(h)(6) of the Communications Act of 1934 certify compliance under the E-Rate program and do not have to provide an additional certification under IMLS's Library State Grants program.

Public libraries and public elementary and secondary school libraries must be in compliance with CIPA to obtain Program Year 2006 funding, and are not eligible to receive a waiver.

II. BACKGROUND

3. The Children's Internet Protection Act established new Internet safety requirements for IMLS's State Grants Program. Under the State Grants Program, IMLS awards financial assistance to State Library Administrative Agencies, which, in turn, use the funds for State-wide activities or to make sub-grants to enhance local or regional library activities. Pursuant to 20 U.S.C. § 9134(f), which implements CIPA's provisions, SLAAs must provide assurance to IMLS that all LSTA State program funds will be used in accordance with CIPA's requirements. CIPA provides that:

[1] *United States* v. *American Library Ass 'n, Inc.*, No.02-361, 123 S.Ct. 2297, 2003 WL 21433656 (June 23, 2003).

(1) no funds made available under IMLS's State Grants program,

(2) for a public library, or a public elementary or secondary school library,

(3) that does not receive services at discount rates under section 254(h)(6) of the Communications Act of 1934,

(4) may be used to purchase computers used to access the Internet or to pay for direct costs associated with accessing the Internet, *unless*

(5) the library has in place a policy of --

> (a) Internet safety for minors that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are (I) obscene; (II) child pornography; or (III) harmful to minors; and is enforcing the operation of such technology protection measure during any use of such computers by minors; and
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> (b) Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are (I) obscene; (II) child pornography; and is enforcing the operation of such technology protection measure during any use of such computers.

Both the State Library Administrative Agencies and libraries seeking LSTA State Program funds must certify compliance with the law. While the State Library Administrative Agencies assure compliance to IMLS,[2] public libraries and public school libraries subject to CIPA, must certify compliance with the law as part of the application cycle for LSTA grant funds from the State Library Administrative Agencies.[3] During the first program year after CIPA takes effect (Year 1), an applicant library must either certify compliance with CIPA's Internet safety requirements or certify that the library is undertaking actions to put in place an Internet safety policy that meets CIPA's requirements. For the second program year (Year 2), the library must certify compliance with CIPA's requirements, unless eligible for a waiver because of State or local procurement rules or regulations. *See, generally*, 20 U.S.C. § 9134(4)(B). For the third Program Year (Year 3), a library must certify compliance with CIPA's requirements. A library is no longer eligible for a waiver of CIPA's requirements.

4. To implement CIPA's provisions, IMLS added a CIPA assurance to the State Library Administrative Agency application (the State's Five-Year Plan) for Program Year 2003. Program Year 2003, beginning on October 1, 2002, was the first program year following passage of CIPA for which IMLS could implement CIPA's requirements. IMLS provided the State Library Administrative Agencies with technical assistance and sample certifications to use with public libraries and public elementary and secondary school libraries when awarding Program Year 2003 funds.

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[2] 20 U.S.C. § 9134(b)(6).

[3] 20 U.S.C. §§ 9134(f)(1) and (4)(B).

5. Subsequently, a three-judge district court held that requiring public libraries to use filtering technology violated the First Amendment of the United States Constitution.[4] It issued an order on May 31, 2002, holding Section 9134(f) facially unconstitutional and permanently enjoining IMLS from withholding federal funds from any public library for failure to comply with CIPA's provisions.[5]

6. In compliance with the district court's injunction, the Institute of Museum and Library Services suspended enforcement of 20 U.S.C. § 9134(f) with respect to public libraries, pending Supreme Court action.[6] IMLS modified its Program Year 2003 certification requirements to reflect the district court's opinion. For Program Year 2003, the State Library Administrative Agencies were required to assure the Federal government that no funds would be made available to purchase computers to access the Internet or pay for direct costs associated with accessing the Internet for public elementary and secondary school libraries that did not comply with CIPA's requirements. For public elementary and secondary school libraries, Program Year 2003 was Year 1 of CIPA compliance.

7. On June 23, 2003, the Supreme Court issued its opinion reversing the judgment of the district court and finding that CIPA, on its face, is constitutional. The Supreme Court held that public libraries' use of Internet filtering software does not violate their patrons' First Amendment rights, therefore CIPA does not induce libraries to violate the Constitution and is a valid exercise of Congress's spending power[7]. In upholding CIPA, the Supreme Court emphasized "the ease with which patrons may have the filtering software disabled," and that a patron who "encounters a blocked site . . . need only ask a librarian to unblock it or . . . disable the filter."[8] Under the IMLS Grants to States Program, an administrator, supervisor, or other authority may disable a technology protection measure to enable access for bona fide research or other lawful purposes. 20 U.S.C. § 9134(f)(3). The plurality highlighted the government's confirmation at oral argument that a "librarian can, in response to a request from a patron, unblock the filtering mechanism altogether," and further that a patron would not "have to explain . . . why he was asking a site to be unblocked or the filtering to be disabled."[9] Pursuant to Supreme Court rules, the decision in *United States. v. American Library Association* became effective after July 18, 2003.[10]

III. IMPLEMENTATION

8. Consistent with the Supreme Court decision, IMLS lifted the suspension of enforcement of 20 U.S.C. § 9134(f) as it pertains to public libraries.

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[4] *American Library Association Inc.* v. *United States*, 201 F. Supp.2d 401 (E.D. Pa. 2002).

[5] *Id.* at 496.

[6] Section 1741(a) of CIPA, 114 Stat. 2763A-351, provides expedited review for constitutional challenges by a three-judge district court pursuant to 28 U.S.C. § 2284.

[7] *United States v. American Library Ass'n.*, 2003 WL 21433656 at *8 (plurality opinion)

[8] *United States v. American Library Ass'n.*, 2003 WL 21433656 at *8 (plurality opinion)

[9] *Id.* At *8 (quoting Tr. Of Oral Arg. 4).

[10] Under the Supreme Court's rules, its decisions do not become effective until the Court sends a certified copy of the judgment to the lower court. The Court does not send the certified copy until at least 25 days after the entry of judgment. Sup. Ct. R. 45.

9. Consistent with the implementation framework established by Congress, IMLS requires State Library Administrative Agencies to provide assurance to IMLS of compliance with CIPA's provisions with respect to public libraries *and* public elementary and secondary school libraries. To receive Program Year 2006 IMLS State Program funds, each SLAA must assure IMLS that no funds made available under the State program for a public library or public elementary or secondary school library that does not receive E-rate services may be used to purchase computers used to access the Internet or to pay for the direct costs of accessing the Internet, unless the library has certified compliance with the applicable CIPA requirements.

10. Public libraries and public elementary and secondary school libraries must certify compliance with the Act and are no longer eligible to seek a waiver of the Act's requirements.

11. To assist the State Library Administrative Agencies with implementing CIPA's requirement of collecting certifications from public libraries and public elementary and secondary school libraries subject to the law, IMLS has prepared the attached technical assistance and sample certifications. Applicant libraries are required to provide CIPA certifications to the SLAA. A consortium or group applicant affected by the law must (1) collect and maintain on file a certification from each of the group's constituent libraries to which CIPA's conditions apply, and (2) provide a certification on behalf of the group to the SLAA.

12. State Library Administrative Agencies must continue to carry out the pertinent CIPA requirements with respect to Program Years 2003, 2004, and 2005 funding, as set out in the law and as described in earlier technical assistance provided by IMLS.

IV. DEFINITIONS

13. The terms "child pornography," "harmful to minors," "minor" and "obscene" are defined in 20 U.S.C. § 9134(f)(7). The term "technology protection measure" is defined in Section 1703(b)(1) of the Children's Internet Protection Act.

14. For purposes of funding under the LSTA State Grants Program, the term "direct costs associated with accessing the Internet" refers to the costs of connecting to an Internet service provider ("ISP").