

# Recognizing and Resisting Censorship in Online Safety Bills: A Framework for Libraries

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## ABSTRACT

This paper explores historical and contemporary efforts to regulate internet content under the rationale of keeping kids safe online, with a particular focus on the implications for libraries and intellectual freedom. Using the Children’s Internet Protection Act as a historical example, the paper demonstrates how filtering mandates have resulted in the overblocking of constitutionally protected speech. Resistance to CIPA, spearheaded by the American Library Association, highlights the dangers of using vague and expansive terms like “harmful to minors” to justify censorship by government enforcers. Decades later, federal and state laws raise similar concerns about advancing censorship agendas under the pretext of protecting children online. The paper concludes with a framework for librarians to evaluate legislation for potential threats to intellectual freedom and advocate for balanced approaches to online safety that preserve access to information. The framework is based on questions that the Association of Research Libraries (ARL) asks when analyzing legislation.

## A Brief History of Legislative Overreach: Lessons from CIPA

Tensions between online safety legislation and the unintended consequences of censorship are illustrated in the implementation of the Children’s Internet Protection Act (CIPA), which Congress enacted in 2000 to address the government’s “concerns about children’s access to obscene or harmful content over the Internet.” CIPA requires schools and libraries that receive federal support for internet access (in the form of discounts through the federal E-Rate program or Library Services and Technology Act grants) to filter access to pictures that are: (a) obscene, (b) child pornography\*, or (c) harmful to minors. “Obscene” speech and “child pornography” are statutorily defined and regulated in the United States Code. But the last category—“harmful to minors”—includes constitutionally protected speech that is nevertheless often blocked by web filters that libraries install to comply with CIPA (Jaeger and McClure 2004).

\* “Child pornography” is the term used in the CIPA statute and many other state laws, but because that term implies consent, the US Department of Justice and children’s advocates like the National Center for Missing & Exploited Children (NCMEC) recommend the term “child sexual abuse material” (CSAM) to accurately refer to sexual abuse and exploitation of a child.

Automated web content filters are imprecise tools that block content according to broad categories without the capability to parse the meaning or context of a text (Duarte and Llansó 2017). In 2024, The Markup found that the broad, proprietary categories that filters use often restrict access to educational materials and critical support services on websites like The Trevor Project, Planned Parenthood, and NASA (Mathewson 2024). Access to health information, in particular, is inconsistent, depending on the specific filtering product as well as the settings implemented by a school or library (Kaiser Family Foundation 2002). In 2012, the ACLU won a lawsuit against a school district in Missouri for its use of a “sexuality” filter that blocked positive material about LGBTQIA+ issues while failing to block CIPA-prohibited sites (American Civil Liberties Union 2012). In that case, *PFLAG v. Camdenton R-III School District*, a federal judge held that the filter did not comply with professional standards of librarianship, in part because the filter lacks clear criteria for categorizing websites (American Civil Liberties Union 2012).

Censorship is incongruous with the mission of libraries, which is to curate and provide access to reliable, age-appropriate information sources. The American Library Association (ALA) challenged CIPA on the grounds that it induces unconstitutional speech restrictions on internet access in public libraries (American Library Association 2003). In a brief to the US Supreme Court, ALA pointed to evidence that filters often block entire categories of websites containing valuable information while failing to restrict access to websites that fall within CIPA’s definitions (American Library Association 2003). ALA argued that the government’s interest in preventing patrons from accessing illegal speech “cannot justify blocking a large amount of speech that is legal and constitutionally protected. The state may not censor protected speech in order to suppress unprotected speech.” Unfortunately, the Supreme Court upheld CIPA in 2003, finding that it did not violate the First Amendment rights of adult library patrons because they could request that the filters be disabled when they used the libraries’ terminals.

Some state legislatures have enacted so-called “Son of CIPA” laws, with CIPA-like requirements for libraries or schools to install filtering software (Jaeger et al. 2005). A law in Utah, HB 341, prohibits a public library from receiving state funds unless that library filters internet access to certain types of images (Utah State Legislature 2004). The Salt Lake City Library Board enforced its no-filter policy in the face of this law, explaining that the state grant funding is less than the cost of installing and maintaining the filters (Hamilton 2004). But refusing to comply with state or federal requirements linked to grant funding is a difficult decision for library systems that are under-resourced (Oder 2010).

## Contemporary Concerns: Censorship Under the Kids Online Safety Act (KOSA)

More than two decades after the Supreme Court upheld CIPA, federal lawmakers are still attempting to restrict children’s access to content that the government deems to be “harmful to minors.” The Kids Online Safety Act (KOSA) was first introduced in 2022 with a duty of care clause that would have required covered platforms to take reasonable steps to prevent and mitigate “harms to minors,” e.g., self-harm, eating disorders, online bullying, sexual exploitation, illegal drugs, or alcohol.

Historically, “harmful to minors” is a vague term that has been used to ban books related to LGBTQIA+ topics and sex education (ACLU of Indiana 2023). That this remains true in the current political context is not conjecture, paranoia, or hyperbole; in 2023, the Heritage Foundation explicitly stated that KOSA would be used to keep “trans content” away

from children as a way of “protecting kids” (Masnick 2023). A few months later, Senator Blackburn (R-TN) said “protecting minor children from the transgender in this culture” should be among the top priorities of conservative lawmakers (Lavietes 2023).

Civil liberties groups oppose KOSA, in part due to concerns that it could limit the ability of individuals to access valuable, lifesaving information. In a letter, the groups explained that “filtering used by schools and libraries in response to the Children’s Internet Protection Act has curtailed access to critical information such as sex education or resources for LGBTQIA+ youth” (Center for Democracy & Technology 2022).

KOSA also raises concerns about self-censorship; to avoid being sued under the bill, websites might preemptively remove information about topics like abortion or transgender health care that government enforcers could target if they determine it to be harmful to minors under the law (Mackey and Kelley 2024). In a May 2024 hearing, Representative Frank Pallone (D-NJ) described how KOSA could lead to censorship if platforms “over-filter content” due to fear of legal risks, potentially causing young people to “lose access to helpful and even life-saving content” (Energy and Commerce Committee 2024).

## Censoring the Internet Won’t Keep Kids Safe

Today’s censorship bills are reminiscent of the moral panic that gripped lawmakers and the public at the dawn of the internet. But even then, some lawmakers recognized “the danger of government censorship of the Internet” (Congressional Record 1995). In 1995, Senator Feingold opposed the Communications Decency Act (CDA), which would have required websites to verify the age of visitors to their sites. Feingold argued that government attempts to restrict access to “obscene” or “indecent” content could have a chilling effect on socially valuable online forums (Congressional Record 1995).

In 1997, the Supreme Court struck down most of the CDA in the case *Reno v. ACLU*, ruling that “the governmental interest in protecting children from harmful materials...does not justify an unnecessarily broad suppression of speech addressed to adults.” Section 230—which safeguards libraries and other interactive computer services from liability for third-party content—was not affected by the decision and remains the law today.

Framing legislation as a measure to protect children is a powerful political tactic to galvanize support for a lawmaker’s agenda, even if a proposed law would lead to censorship. This strategy has been employed effectively in recent years, with twenty-one states enacting “educational gag orders,” a term that PEN America uses to describe bills that restrict the freedom to teach concepts like diversity, equity, and inclusion (PEN America 2021). Many educational gag orders falsely label materials by and about LGBTQIA+ people as “obscenity,” a term that has historically been used as grounds for censorship (PEN America 2024). As restrictions on what can be taught, read, and discussed increase at the state and federal levels, libraries and other stakeholders must protect the free flow of information online and be wary of legislation that would erode the fundamental right to access information under the pretext of protecting children.

## What to Expect in 2025 and Beyond

KOSA did not pass in the 118th Congress, but its original sponsors, Senator Blumenthal (D-CT) and Senator Blackburn (R-TN), have pledged to reintroduce the bill (US Senate Committee on the Judiciary 2025). House Speaker Mike Johnson (R-LA) and Energy and

Commerce Committee Chair Brett Guthrie (R-KY) have signaled that kids' online safety is on the agenda for the next Congress (Politico 2024). In a twist, Johnson weighed in against KOSA in late 2024 due to concerns that the bill could be used to censor conservative voices (Nazzaro 2024). However, other attempts to legislate restrictions on access to certain types of websites or content have already resurfaced in 2025.

In January 2025, Chairman of the US Senate Committee on Commerce, Science, and Transportation Ted Cruz (R-TX) reintroduced the Kids Off Social Media Act (KOSMA), which threatens loss of federal funding if schools do not prevent students from accessing social media platforms. In a February Senate Judiciary Committee hearing on "Children's Safety in the Digital Era," Chairman Chuck Grassley (R-IA) referenced "a number of" online safety bills that are being considered and refined by this Congress (Grassley 2025).

Child online safety legislation will remain a priority for state houses in the coming years as well. In 2024, Texas enacted the Securing Children Online Through Parental Empowerment ("SCOPE") Act, which is like CIPA in that it requires platforms to "prevent harm to known minors" by using filtering technology to enforce the blocking of certain content. Computer & Communications Industry Association (CCIA) and NetChoice filed a lawsuit against Texas Attorney General Ken Paxton, seeking to block enforcement of certain provisions of the law (*CCIA Netchoice v. Paxton*).

Some state legislatures are attempting to implement age-verification requirements to prohibit minors from accessing certain websites, similar to the original intent of the Communications Decency Act. Presently, a Texas age-verification law is before the Supreme Court, whose decision will likely affect similar laws in other states; the law was challenged on the basis that it violates the First Amendment by placing an unconstitutional burden on adults seeking to view lawful content (*Free Speech Coalition, Inc. et al., v. Ken Paxton*). The California Age-Appropriate Design Code Act is currently before the US Court of Appeals for the Ninth Circuit, which heard challenges that the law could lead to over-moderation of the internet and restrict users' access to constitutionally protected speech (*NetChoice v. Bonta*).

A 2024 version of KOSA excluded schools and libraries from the bill's requirements, but there is no guarantee that KOSA or a similar bill in the next Congress would include a library carve-out. Regardless, libraries should be concerned about the broader censorship implications of any internet regulation bill.

## A Librarian's Framework for Evaluating Potential Censorship Implications of Legislation

This section provides a framework designed to support libraries in staying vigilant about lawmakers' attempts to impose unconstitutional prohibitions on speech or otherwise impede libraries' ability to provide unrestricted access to library materials or the internet under the guise of keeping kids safe online. The framework is based on questions that ARL asks when analyzing legislation; the questions are not exhaustive, but they are meant to encourage libraries to imagine the implications of legislation on their library and community. Even librarians who are not in a position to lobby can track these bills and share stories about the potential impact of the bill in their libraries and communities with other stakeholders and coalitions.

Figure 1: A librarian’s framework for evaluating potential censorship implications of legislation

A librarians’ framework for evaluating potential censorship implications of legislation	
Bill name and number: Sponsor(s):	
Questions about the bill	Questions about the bill’s impact on your library/community
Implementation and compliance	
<ul style="list-style-type: none"><li>• Does the bill explicitly require libraries or platforms to monitor, filter, or censor materials?</li><li>• If the bill prohibits materials or content, does it employ vague terminology to describe the prohibited materials (e.g., “harmful,” “inappropriate,” “controversial,” “sensitive,” etc.)? Does the bill define these terms?</li><li>• Would the bill prohibit content that is protected under the First Amendment?</li><li>• Could the bill’s requirements conflict with existing state or federal legal rights or protections for libraries or their patrons, students, or faculty, e.g., the right to free inquiry?</li></ul>	<ul style="list-style-type: none"><li>• In what ways could this bill impede faculty and students from using library collections and platforms to conduct research, particularly on topics pertaining to health or sexuality?</li><li>• How would the bill restrict librarians’ ability to collect resources that support academic coursework and research?</li><li>• Could this bill potentially limit access to teaching and research materials that represent diverse perspectives, identities, or communities?</li><li>• Do the bill’s provisions conflict with library collection policies and practices, including laws that protect patron privacy?</li></ul>
Enforcement	
<ul style="list-style-type: none"><li>• Which entities are authorized to enforce the bill’s requirements (i.e., does it grant individuals a private right of action, or can it be enforced by the state attorney general)?</li><li>• Does the bill include protections for libraries acting in good faith?</li><li>• Would the bill require libraries to restrict access to the internet and/or categories of materials for people of certain ages?</li></ul>	<ul style="list-style-type: none"><li>• Could the bill incentivize self-censorship by libraries or platforms to avoid penalties or liability?</li><li>• Could the legislation be misused by enforcers to remove or challenge materials in library collections or platforms?</li></ul>
Engagement and advocacy	
<ul style="list-style-type: none"><li>• Was there consultation with libraries, educators, students, researchers, and other stakeholders during the legislative process?</li><li>• Did the bill go through regular order, e.g., hearings and markups in the appropriate committee?</li></ul>	<ul style="list-style-type: none"><li>• Which coalitions, consortia, or other groups is your library a member of through which you could share your concerns about this bill or propose revisions to safeguard intellectual freedom?</li><li>• Would the bill be more acceptable if libraries were not beholden to its requirements?</li></ul>

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