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A Patron Is Viewing What Appears to Be Child Pornography on a Library Computer; What Should Be Done? PART II

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A Patron Is Viewing What Appears to Be Child Pornography on a Library Computer;
What Should Be Done? PART II

In a previous Library Law Article, we addressed questions regarding the Illinois Library Records Confidentiality Act and the child pornography provisions of the Illinois Criminal Code.

We first addressed the Illinois Library Records Confidentiality Act and its protection of patron circulation and registration records, subject to three exceptions: (1) a court order to publish confidential patron circulation and registration records; (2) a sworn law enforcement officer's representation that publication of confidential patron circulation and registration records is necessary to (a) identify a suspect, witness or victim of a crime; (b) that he or she has probable cause to believe that there is imminent danger of physical harm; and (c) that it is impractical to secure a court order because an emergency exists; and (3) publication of confidential patron circulation/registration records as "otherwise permitted by law."

With regard to the third exception to the Illinois Library Records Confidentiality Act, we addressed the child pornography and aggravated child pornography provisions of the Illinois Criminal Code, which essentially prohibit creating, possessing or disseminating child pornography, but do not prohibit viewing child pornography. To be illegal under the Illinois Criminal Code, viewing child pornography must be coupled with creating, possession or dissemination. Furthermore, under the Illinois Criminal Code, only computer technicians and photography lab reproduction technicians have a legal duty to report child pornography.

However, unlike Illinois law, federal law provides that it is illegal to view child pornography. Indeed, Subsection (a)(5)(B) of 18 U.S.C. §2252A entitled, "Certain activities relating to material constituting or containing child pornography," provides in part: "(a) Any person who - . . . (5) either - . . . (B) . . . knowingly accesses with intent to view, any . . . computer disk, or any other material that contains an image of child pornography . . .", including by computer . . . shall be punished as provided in subsection (b)."

Subsection (b)(2) of 18 U.S.C. §2252A then provides in part:



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“Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.”

In light of the fact that federal law, unlike Illinois law, makes it illegal to view child pornography, we recommend that you discuss enforcement of the federal law with your local law enforcement agency as well as your library counsel.

In the meantime, if you have a complaint from either a patron or staff that someone is viewing child pornography, immediately contact your IT professional to determine what was accessed and how to preserve that data. In addition, we recommend that you immediately contact your legal counsel and local law enforcement.

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