

**“A Patron Is Viewing What Appears To Be Child Pornography
On A Library Computer; What Should Be Done?”**

A report is made that a library patron is viewing what appears to be child pornography on a library computer. What should the library do? First, the Library should take appropriate action in accordance with any Board policy that might address this issue. However, this scenario raises questions regarding the Library Records Confidentiality Act and the child pornography provisions of the Illinois Criminal Code of 1961, including the duty to report child pornography provisions thereof. Simply stated, there are no easy answers to this question, and the library must exercise caution when dealing with this scenario.

Your first inclination may be to report the patron to your local law enforcement agency. Is such a report a violation of the patron's rights under the Library Record's Confidentiality Act (75 ILCS 70/1)? As discussed more fully below, the answer to this question is, “maybe.”

Section 1 of the Act provides in relevant part:

“(a) The registration and circulation records of a library are confidential information. No person shall publish or make any information contained in such records available to the public unless:

- (1) required to do so under a court order; or
- (2) the information is requested by a sworn law enforcement officer who represents that it is impractical to secure a court order as a result of an emergency where the law enforcement officer has probable cause to believe that there is an imminent danger of physical harm. The information requested must be limited to identifying a suspect, witness, or victim of a crime. The information requested without a court order may not include the disclosure of registration or circulation records that would indicate materials borrowed, resources reviewed, or services used at the library. If requested to do so by the library, the requesting law enforcement officer must sign a form acknowledging the receipt of the information. A library providing the information may seek subsequent judicial review to assess compliance with this Section.



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

This subsection shall not alter any right to challenge the use or dissemination of patron information that is otherwise permitted by law.

(b) This Section does not prevent a library from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation where those reports are presented so that no individual is identified therein.

* * *

(c) For the purpose of this Section, . . . (ii) 'registration records' includes any information a library requires a person to provide in order for that person to become eligible to borrow books and other materials and (iii) 'circulation records' includes all information identifying the individual borrowing particular books or materials."

Simply stated, under the Act, registration records, including information required by a library for a person to become eligible to borrow books and other materials, and circulation records, including information identifying the individual borrowing particular books or materials, are confidential information and cannot be published, nor can information contained in such records be made available to the public unless one of three exceptions apply. The three exceptions are: first, a court order is entered which requires publication of the foregoing information. Second, a sworn law enforcement officer represents that the foregoing information is needed (a) to identify a suspect, witness or victim of a crime; (b) that he or she has probable cause to believe that there is an imminent danger of physical harm; and (c) that it is impractical to secure a court order because an emergency exists. Third and finally, the foregoing information can be published as otherwise permitted by law.

We believe that the identity of the patron at issue may constitute registration and circulation records not only because the patron's identity may be necessary for him or her to become eligible to borrow or use library materials, such as a computer and computer time, but also because his or her identity may be necessary for him to borrow or use those library materials. With regard to the exceptions to the Library Records Confidentiality Act, unless a court order has been entered requiring publication of the patron's identity or a sworn law enforcement officer has represented that information regarding the patron is needed as required by the Act, it may not be appropriate to publish the patron's identity.

Klein, Thorpe & Jenkins, Ltd.

Chicago

Orland Park

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

www.ktjlaw.com

With regard to the third exception to the Library Records Confidentiality Act, namely, the patron's identity can only be published if otherwise permitted by law, to date, no Illinois case law has interpreted the Library Records Confidentiality Act and, therefore, there is no case law identifying if a patron's identity can be published as otherwise permitted by law. In light of this lack of case law, Illinois statutes must be reviewed to determine whether there are any statutory provisions which would permit or otherwise mandate disclosure of a patron's registration and circulation records where the patron was observed viewing child pornography.

With regard to the criminal offense of child pornography, Section 11-20.1 of the Criminal Code of 1961 defines the offense (pornography involving children under the age of 18 or any severely or profoundly developmentally disabled person), but does not make the sole act of viewing or observing child pornography a criminal offense. Indeed, at this time, viewing must be coupled with some other element such as possession to become a crime under the Act. Instead, Section 11-20.1 of the Criminal Code of 1961 makes activities like production, distribution and possession of child pornography as well as other activities related to the child pornography industry criminal offenses.

With regard to the criminal offense of aggravated child pornography, Section 11-20.3 of the Criminal Code of 1961 defines the offense (pornography involving children under the age of 13), but, like Section 11-20.1, does not make the sole act of viewing or observing child pornography a criminal offense. As stated, at this time, viewing must be coupled with some other element, such as possession, to become a crime under the Act. Also, like Section 11-20.1, Section 11-20.3 of the Criminal Code of 1961 makes activities like production, distribution and possession of child pornography as well as other activities related to the child pornography industry a criminal offense.

With regard to the duty to report child pornography, Section 11-20.2 of the Criminal Code of 1961 imposes upon, among others, computer technicians who have "knowledge of or observes within the scope of his professional capacity or employment any . . . computer hard drive or any other magnetic or optical media" depicting child pornography, a duty to report or cause a report to be made to local law enforcement officials or to the Illinois Child Exploitation e-Tipline at reportchildporn@atg.state.il.us. Computer technicians are so obligated to report their findings because it is assumed that a computer's owner has downloaded and possesses child pornography which is a criminal offense under the child pornography statutes. Accordingly, if the library employs a computer technician, and the library's computer technician can demonstrate that the patron at issue was doing something more than simply viewing child pornography, such as producing, downloading, possessing, distributing or transmitting child pornography, the library's computer technician would be obligated to report the criminal offense, and the library would be within its rights to report the criminal offense.

Klein, Thorpe & Jenkins, Ltd.

Chicago

Orland Park

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

www.ktjlaw.com

Section 11-20.2 does not, however, impose a reporting duty upon libraries generally which would abrogate the confidentiality created by the Library Records Confidentiality Act. It only imposes a duty upon computer technicians who can demonstrate that someone was doing something more than simply viewing child pornography, as neither the child pornography statute nor the aggravated child pornography statute make it a criminal offense for someone to view or observe child pornography. Accordingly, even if the library employs a computer technician who could demonstrate that the patron was viewing child pornography on the computer, this is not a reportable criminal offense, the library's computer technician is not under any statutory reporting obligation, and the Library's Records Confidentiality Act may be violated if such a report is made.

If, however, it can be demonstrated that the patron was doing something more than simply viewing child pornography, such as producing, downloading, possessing, distributing or transmitting child pornography, or was otherwise engaged in the child pornography industry, we believe that a library would be justified in reporting this criminal offense to the proper authorities and, if the library employs a computer technician, the computer technician would be obligated to report the criminal offense.

If you encounter the foregoing scenario at your library, we highly recommend that you contact counsel to discuss the facts and circumstances involved.

Klein, Thorpe & Jenkins, Ltd.

Chicago

Orland Park

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

www.ktjlaw.com