

ISOL 633 LEGAL REGULATIONS, INVESTIGATION AND COMPLIANCE

LESSON 5 – CHAPTER 5

**SECURITY AND PRIVACY OF INFORMATION BELONGING TO
CHILDREN AND IN EDUCATIONAL RECORDS**

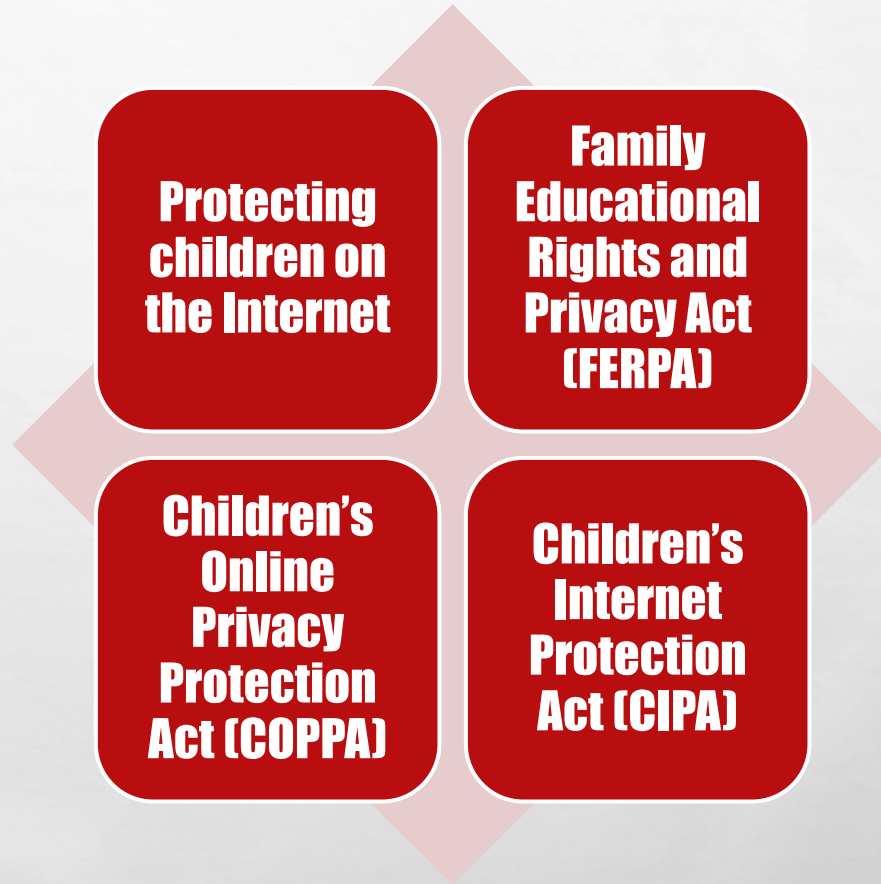


LEARNING OBJECTIVES

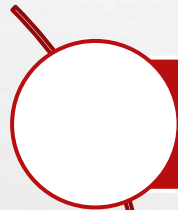
- **DESCRIBE LAWS THAT PROTECT CHILDREN ON THE INTERNET AND LAWS THAT PROTECT INFORMATION OF CHILDREN IN EDUCATIONAL SETTINGS.**



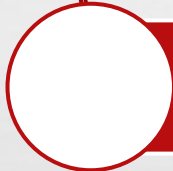
KEY CONCEPTS



CHALLENGES IN PROTECTING CHILDREN ON THE INTERNET



Identification of children



First Amendment and censorship



Defining objectionable content

CHALLENGES TO IDENTIFYING CHILDREN...?



How can you protect Children if you can't identify them?

- **Requiring User Input.**
- **Requirement Payment for access to the site**
- **Parental Controls**
- **Parental Consent**

BALANCE BETWEEN PROTECTING CHILDREN AND THE FIRST AMENDMENT

FIRST AMENDMENT:

- **CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.**



DOES THE FIRST AMENDMENT APPLY TO THE INTERNET?

- **YES. THE GOVERNMENT CANNOT RESTRICT AN ADULT'S ACCESS TO CONTENT ON THE INTERNET.**

PROTECTING CHILDREN FROM OBSCENITY

Defining Obscenity:

- See **Roth vs. US, 354 U.S. 476 , (1957)**
- See **Miller v. California, 413 US. 15, (1973)**
- See **Jacobellis v. Ohio 378 US. 184 (1964)**

Work, taken as a whole, applying community standards (1) Appeals predominantly to the prurient interests (Unwholesome, Leud, vulgar, crude, Lustful, Lubricious, Lecherous, Salacious, Extrinsic, Pandemic, Imponderable, not part of the essential nature of someone)

(2) Depicts or describes sexual conduct in a patently offensive way as defined by applicable state law

(3) Lacks serious literary, artistic, political, or scientific value.

Jacobellis v. Ohio 378 US. 184 (1964)

- **JACOBELLIS V. OHIO**, 378 **U.S. 184** (1964), **UNITED STATES SUPREME COURT** 1964
QUESTION: COULD THE STATE OF OHIO BAN THE SHOWING OF THE **LOUIS MALLE** FILM **THE LOVERS** (*LES AMANTS*), WHICH THE STATE HAD DEEMED **OBSCENE**, WITHOUT VIOLATING THE FIRST AMENDMENT TO THE US CONSTITUTION.
- **FACTS: NICO JACOBELLIS**, MANAGER OF THE HEIGHTS ART THEATRE IN **CLEVELAND HEIGHTS, OHIO**, WAS CONVICTED AND FINED \$2,500 FOR EXHIBITING THE FILM, AND HIS CONVICTION WAS UPHeld BY THE **SUPREME COURT OF OHIO**.
- THE U.S. SUPREME COURT REVERSED THE CONVICTION, RULING THAT THE FILM WAS NOT OBSCENE AND HENCE CONSTITUTIONALLY PROTECTED.

JACOBELLIS V. OHIO 378 US. 184 (1964)

- FAMOUSLY JUSTICE **POTTER STEWART**'S CONCURRING THAT CONSTITUTION PROTECTS ALL OBSCENITY EXCEPT "HARD-CORE PORNOGRAPHY" WROTE OF PORNOGRAPHY,

"I SHALL NOT TODAY ATTEMPT FURTHER TO DEFINE ...(PORNOGRAPHY); AND PERHAPS I COULD NEVER SUCCEED IN INTELLIGIBLY DOING SO. BUT ***I KNOW IT WHEN I SEE IT***, AND THE MOTION PICTURE INVOLVED IN THIS CASE IS NOT THAT."

- THE COURT'S OBSCENITY JURISPRUDENCE WOULD REMAIN FRAGMENTED UNTIL 1973'S ***MILLER V. CALIFORNIA***. MANY LEGAL OBSERVERS FEEL THAT, AFTER MILLER, IT REMAINED CONFUSING AND VAGUE. WHAT IS OBSCENE IN ONE PLACE CAN WELL BE COMPLETELY LEGAL IN ANOTHER.

MILLER V. CALIFORNIA

- **FACTS: IN 1971, MARVIN MILLER, AN OWNER/OPERATOR OF A CALIFORNIA MAIL-ORDER BUSINESS SPECIALIZING IN PORNOGRAPHIC FILMS AND BOOKS, SENT OUT A BROCHURE ADVERTISING FOR BOOKS AND A FILM THAT GRAPHICALLY DEPICTED SEXUAL ACTIVITY. FIVE OF THE BROCHURES WERE MAILED TO A RESTAURANT IN CALIFORNIA . THE OWNER AND HIS MOTHER OPENED THE ENVELOPE AND SEEING THE BROCHURES, CALLED THE POLICE.**
- **MILLER WAS ARRESTED FOR VIOLATING CALIFORNIA LAW WHICH PROHIBITED THE POSSESSION, EXHIBITION, SALE OR DISTRIBUTION FOR SALE ANY OBSCENE MATTER.**
- **MILLER WAS TRIED IN ORANGE COUNTY, CALIFORNIA. JURY WAS INSTRUCTED TO EVALUATE THE EVIDENCE **BY THE COMMUNITY STANDARDS** OF CALIFORNIA. THE JURY RETURNED A GUILTY VERDICT.**
- **MILLER APPEALED ARGUING THAT THE JURY INSTRUCTIONS DID NOT USE THE PRIOR STANDARD WHICH APPLIED A NATIONAL STANDARD AND WHICH READ THAT THE MATERIAL MUST BE “UTTERLY WITHOUT REDEEMING SOCIAL VALUE.” CRT OF APPEALS AFFIRMED THE JURY VERDICT. MILLER THEN APPEALED TO CALIFORNIA SUPREME COURT, WHICH DECLINED TO REVIEW. MILLER APPLIED TO THE SUPREME COURT FOR **CERTIORARI**, WHICH WAS GRANTED.**
- **SUPREME COURT OPINED THAT WHAT MILLER WAS DISTRIBUTING WAS OBSCENE AND NOT PROTECTED BY THE FIRST AMENDMENT.**

WHERE ARE WE TODAY?

Basic case law resulting from these cases:

- **Obscenity is not protected by the First Amendment and thus can be regulated by the state, which must conform to the three-part test of *Miller v. California***
- **(1) Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;**
- **(2) Whether the work depicts or describes, in an offensive way, sexual conduct or excretory functions, specifically defined by applicable state law; and**
- **(3) Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.**

COPPA VS. COPA

CHILDREN'S ONLINE PRIVACY PROTECTION ACT

**Passed in 1998, effective 2000,
revised in 2012**

**Purpose: Governs how web sites
collection from children under
the age of 13**

CHILD ONLINE PROTECTION ACT

**Enacted in 1998, never became
effective**

**Purpose: Protect minors from access
to harmful material on the internet.**

**Ruled that COPA violated first
amendment free speech**

COPPA CONTINUED...

Definition of:

- **Child**
- **Parent**
- **Operator**
- **Personal Information**

Two main rules:

- **Must post privacy policy**
- **Must obtain parental consent**

Who is regulated by COPPA-FTC

What is a web site or online service for purposes of COPPA?

Website, mobile app, internet gambling site, advertiser, etc.

CHILDREN'S ONLINE PRIVACY PROTECTION ACT (COPPA)

Notice of information practices on home page

Notice at each area where personal information from children is collected

Notice must be clearly written and understandable

Notice may not include any unrelated or confusing materials

Notification of parent is required

Verifiable parental consent is required



COPPA CONTINUED...

Privacy Policy Must Contain:

- **Operator Contact Information**
- **Notice of what information is collected**
- **Notice of how information is collected**
- **Notice of how the information will be used**
- **Notice of whether the information is disclosed to 3rd parties**
- **Assurance that participation is not conditioned on data collection**
- **Parental rights**

COPPA CONTINUED...

GAINING PARENTAL CONSENT



CONTENTS OF THE NOTICE:



COPPA CONTINUED...

Verifiable consent

- **Only by parent**
- **Verify identity of parent**
- **Re-notice when data collection changes**
- **May revoke consent**

When Consent is not required?

- **When collecting an email address to respond to a one time request from a child**
- **When providing an initial notice to parent**
- **When collection is of the child's name and online contact information to protect security of the site**

COPPA CONTINUED...

**How can you verify
parental consent?**

**Sending signed printed
forms**

**Provide government
issued identification**

**Using credit cards or other
online payment forms**

Using toll free numbers

Using video conferencing

CIPA REQUIREMENTS



Schools and libraries must

- **Use technology filter protection measures**
- **Protect against access to harmful visual depictions-offensive content was a visual depiction that is obscene, child pornography or harmful to minors**
- **Adopt and enforce a policy to monitor the online activities of minors**



**Minors are
those 17 years
of age or less**



CIPA...

- **BLOCK OFFENSIVE CONTENT**

- **OBSCENE**

- **CHILD PORNOGRAPHY**

- **HARMFUL TO MINORS**

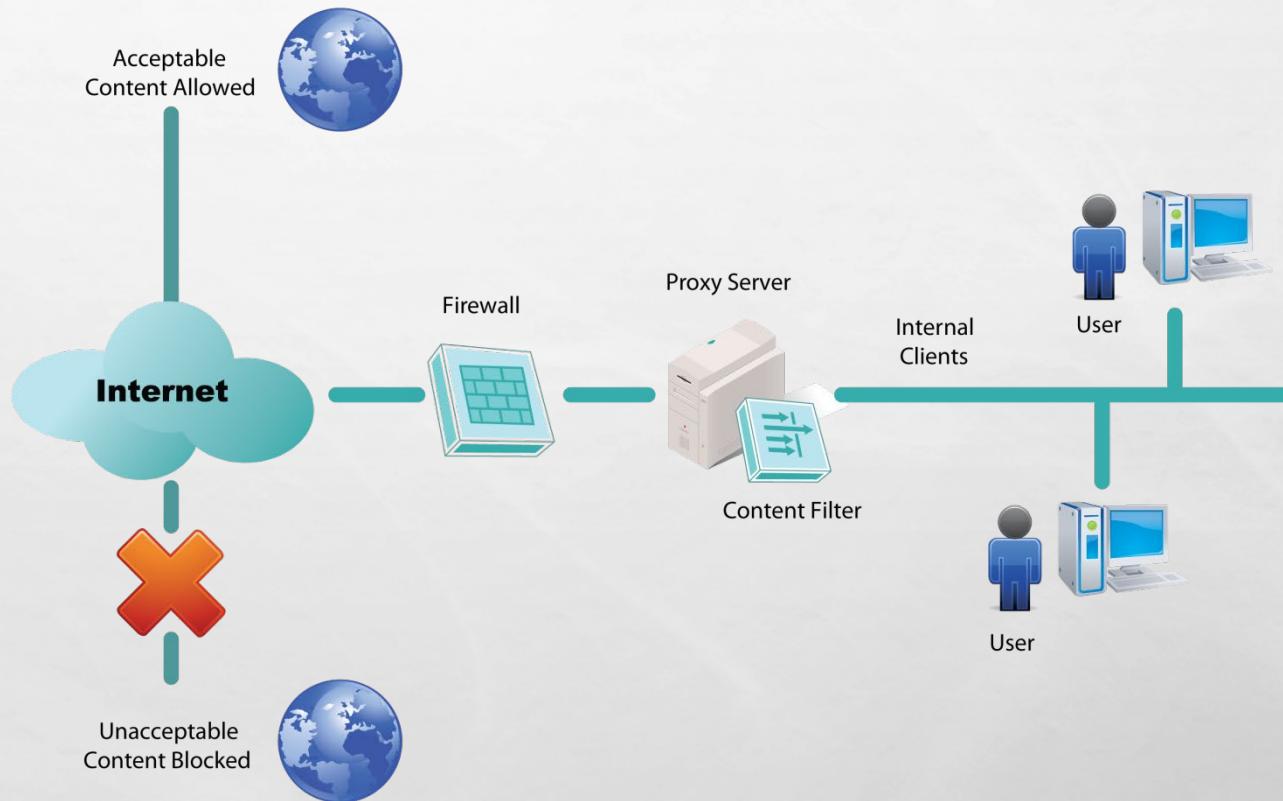
- **TAKEN AS A WHOLE AND WITH RESPECT TO MINORS, APPEALS TO A PRURIENT INTEREST IN SEX, NUDITY OR EXCRETION**
- **DEPICTS, DESCRIBES OR REPRESENTS IN A PATENTLY OFFENSIVE WAY WITH RESPECT TO MINORS AN ACTUAL OR SIMULATED SEX ACT OR SEXUAL CONTACT, OR LEUD EXHIBITION OF THE GENITALS**
- **TAKEN AS A WHOLE LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR SCIENTIFIC VALUE AS TO MINORS**

- **E-RATE**

- **REQUIREMENTS**

- **TECHNOLOGY TO FILTER VISUAL CONTENT (TPM)**
- **INTERNET SAFETY POLICY**

PROXY SERVER USED FOR CONTENT FILTERING



CIPA CONTINUED...

- **INTERNET SAFETY POLICY**
- **EXCEPTIONS**
- **FEDERAL COMMUNICATIONS COMMISSION IS RESPONSIBLE FOR OVERSIGHT OF CIPA.**
 - **VIOLATIONS: PENALTIES INCLUDE REPAYING FUNDING AND SOMETIMES CRIMINAL SUIT**

WHERE DO COPPA AND CIPA APPLY?

Commercial Web sites

Online services

Educational institutions

Libraries

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

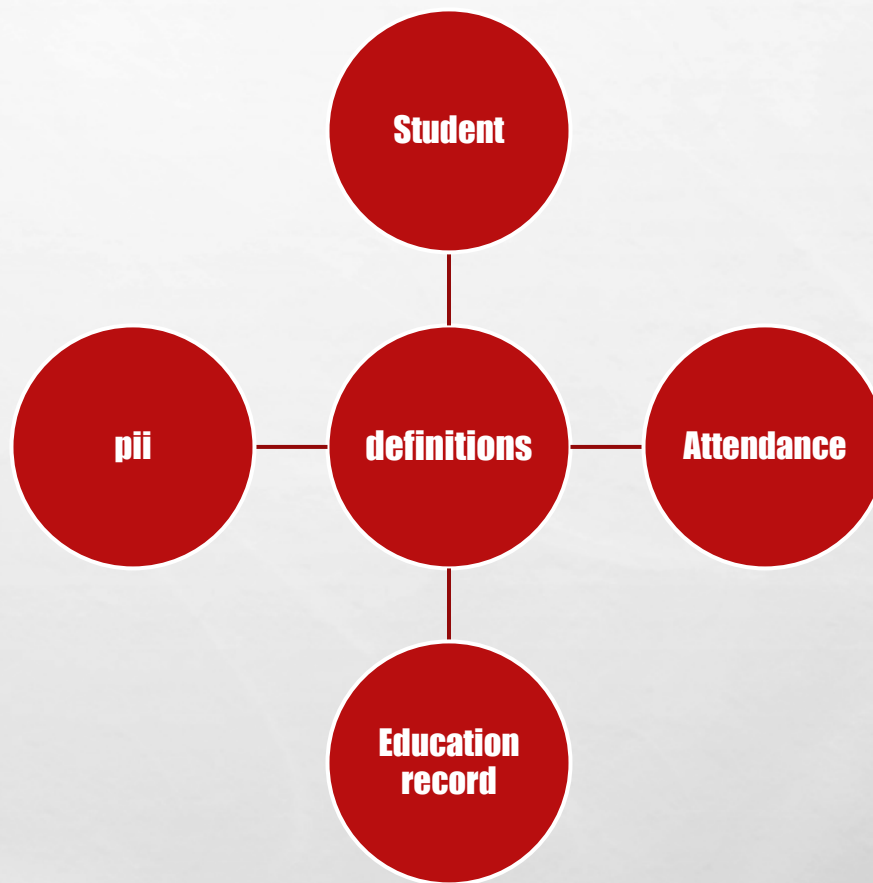


GOAL-protection of student educational records

SCOPE-"schools" that accept direct or indirect federal funding

REQUIREMENTS-notification, access, amendment and disclosure

FERPA...



FERPA CONTINUED...

Four main requirements

- **Annual Notification by any means reasonably likely to inform:**
- **Access to Education Records:**
- **Amendment of education records:**
- **Disclosure of Education Records: Must be by written consent to release.**
 - **Exception**
 - **Oversight – Family Policy Compliance Office of US DOE**

SCHOOL DISCLOSURE EXCEPTIONS IN FERPA

Other schools to which a student is transferring

School officials with legitimate educational interest

Appropriate parties in connection with financial aid to a student

In response to court order or subpoena

To aid in an emergency

Post-secondary schools: Can disclose PII of a student over age 18 to that student's parents if student is a dependent for U.S. federal tax purposes



DIRECTORY INFORMATION

Name

Address

**Telephone
Number**

**Date/Place
of Birth**

**Honors/
Awards**

**Dates of
Attendance**

CRITICAL ASPECTS OF FERPA

Right to inspect and review

Right to correct records

Parental written permission required



SUMMARY



**Protecting
children on
the Internet**



**Family
Educational
Rights and
Privacy Act
(FERPA)**



**Children's
Online Privacy
Protection Act
(COPPA)**



**Children's
Internet
Protection Act
(CIPA)**



THANK YOU!

- **QUESTIONS? EMAIL ME AT SANDRA.REEVES@UCUMBERLANDS.EDU**