

---

**From:** Rick Woldenberg  
**Sent:** Mon 1/12/2009 11:33 PM  
**To:** 'Christian.Fjeld@mail.house.gov'; 'robin.appleberry@mail.house.gov'  
**Cc:** 'brian.mccullough@mail.house.gov'; 'shannon.weinberg@mail.house.gov';  
'william.carty@mail.house.gov'; 'mjpg@brown-gidding.com'; Etienne Veber;  
'challengeandfun@gmail.com'; 'kathleen@fashion-incubator.com'; 'Stephen Lamar  
(slamar@apparelandfootwear.org)'; 'Nancy Nord (nnord@cpsc.gov)'; 'Joe Martyak  
(jmartyak@cpsc.gov)'; 'Mary Toro (MToro@cpsc.gov)'; 'tmoore@cpsc.gov'; 'Patrick Magnuson  
(patrick.magnuson@mail.house.gov)'; 'Carter Keithley (ckeithley@toy-tia.org)'; 'Rick Locker  
(fblocker@LockerLaw.com)'; 'Desmond, Edward'; 'David Callet (calletd@gtlaw.com)';  
'ravitz.georgia@arentfox.com'; Dennis Goldman; 'Pamela Gilbert (pamelag@cuneolaw.com)';  
'Robert Adler'; 'Dan Marshall (dan@peapods.com)'; 'erik.lieberman@mail.house.gov';  
cfalvey@cpsc.gov; Judy Bailey (judith.bailey@mail.house.gov); adele@narts.org;  
kmchugh@astratoy.org  
**Subject:** CPSIA Confusion and Chaos

Christian and Robin,

I know you will want to read this article from the Boston Phoenix (<http://thephoenix.com/Boston/News/74940-Congress-bans-kids-from-libraries/>). This article highlights the now familiar problematic themes of the CPSIA:

a. Disruption of routine trade. In this case, libraries make the legitimate point that lending books is a form of selling. If you can't sell a book violating the CPSIA, presumably you can't lend it either. That implies no more libraries. This fits well with the well-documented future absence from the marketplace of telescopes and microscopes. As a member of the education community, I have a deep concern about the disruption of our education system under the CPSIA and am shocked that Congress seems so immune to this direct threat to our elementary educational system.

b. Chaos in the marketplace. The article cites a demand from Amazon.com to its vendors for certification by January 15 or face a mass return of merchandise - all at the vendors' expense, of course. Given the billions of dollars of trade with Amazon, this is presumably a serious concern to many companies. It also represents a golden opportunity for Amazon to lighten up on inventory after the holidays (nice for them). You have previously been advised of similar moves by other mass merchants. This will result in all-out commercial war and almost certainly major litigation, starting soon.

c. Counter-intuitive rules being imposed under the CPSIA. The very notion that books are a potential health hazard has many people scratching their heads. A reasonable question is raised: How did Congress become aware of a major national health risk that the trade, the public and the CPSC didn't know about? How did that knowledge make its way to Congress without any publisher finding out? Of course, this is not the only industry facing head-scratching rules. The thrift store industry, even after the recent advice from the CPSC, is left in a perilous position. I can assure you the education industry is in disarray, too. [I have raised the issue of science education numerous times in numerous settings.] The implementing rules have people asking why so many items are being regulated even though the CPSC acknowledges that they are very likely lead-free. This problem flows from an overly-broad law.

d. Confusion, confusion, confusion. It seems that many people are deeply troubled and confused about the law. Many legitimate questions have been posed because the law prohibits many normal and safe activities. The CPSC seems to be the party to blame this week. Nonetheless, it appears that confusion is persisting. Could this relate to the law itself? Is it really

clear that everyone who is protesting this law is somehow unable to read and understand the law? Is that explanation plausible, or is that belief simply a refusal to face reality?

An interesting related question is whether any company regulated by this law needs to check existing inventory for compliance as of February 10. I have been informed that the law does not impose a direct requirement to inspect or certify but, then again, the CPSC clearly indicates that violations of the standards for existing inventory will be prosecuted. The issue seems to turn on the meaning of "knowingly" under the CPSA, as "knowledge" is required to be subject to the draconian penalties of the CPSIA. Is the meaning of "knowingly" unambiguous under the law? The definition is found at 15 U.S.C. 2069(d) and is old law:

"(d) **“Knowingly” defined.** As used in the first sentence of subsection (a)(1) of this section, the term “knowingly” means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations."

This definition of "knowingly" means that due care must be taken by anyone to avoid penalties under the law. "Due care" is a serious obligation and a serious undertaking. This is why there is a national shortage of XRF guns now, as panicked manufacturers and retailers attempt to cover this due care obligation 24/7 with February 10 rapidly approaching. Libraries presumably need to scan every book to comply with the CPSIA. No one can safely or appropriately "guess: whether their goods comply or not under the CPSIA. I feel sorry for thrift stores.

I hope the magnitude of these problems will eventually overcome any pride of authorship in this law, and lead to action in resolving these issues. A lot is at stake.

Sincerely,

Richard Woldenberg  
Chairman  
Learning Resources, Inc.  
[rwoldenberg@learningresources.com](mailto:rwoldenberg@learningresources.com)

## Congress bans kids from libraries?

New safety law may prohibit children under 12 from libraries – or make many books illegal

By [LISSA HARRIS](#) | January 9, 2009 | Recommended By 11 People

Is it possible that Congress has just inadvertently turned millions of children's books into contraband? At the moment, anything seems possible with regard to the sprawling, 62-page Consumer Product Safety Improvement Act (CPSIA), passed this past August with overwhelming margins in both the House (424-1) and the Senate (89-3).

The CPSIA, intended to keep lead out of toys, may well also keep books out of libraries, says Emily Sheketoff, associate executive director of

“We are very busy trying to come up with a way to make it not apply to libraries,” said Sheketoff. But unless she succeeds in lobbying Capitol Hill for an exemption, she believes libraries have two choices under the CPSIA: “Either they take all the children’s books off the shelves,” she says, “or they ban children from the library.”

On February 10, the new law gets teeth. After that day, all products for children under 12 — books, games, toys, sports equipment, furniture, clothes, DVDs, and just about every other conceivable children’s gadget and gewgaw — must be tested for lead, and fall below a new 600 part-per-million limit, or face the landfill. Thanks to a September 12 memo from the Consumer Product Safety Commission (CPSC), the lead limit applies not only to new products, but also to inventory already on store shelves.

“Under this new regime, you are suspect until proven safe,” says Allan Adler, the American Association of Publishers’ vice president for legal and governmental affairs.

As the February 10 deadline approaches, the CPSIA has been causing increasing consternation — and, at times, hysteria — among makers and sellers of children’s products, who are just beginning to realize the financial and logistical nightmare they face in trying to comply. Lead testing promises to be expensive — from several hundred to several thousand dollars per test, depending on the product. And each batch of each item must be tracked and tested, making compliance brutally expensive for items with small runs.

Historically, books have been considered more dangerous to read than to eat. Regardless, a memo from the CPSC, issued the day before Christmas Eve, explicitly quashed any hope that books might escape the new law. To make matters worse, even publishers that have already had their products tested for lead will be forced to retest. In the same memo, existing test results based on “soluble lead” — a measure of whether lead will migrate out of a product — were rejected by the CPSC because they did not measure “total lead content.”

The CPSC has not issued any ruling on whether libraries, schools, and other institutions that loan — rather than sell — books will be subject to the law. Without such clear guidance, says Adler, schools and libraries should assume they have to comply.

“If [the CPSC is] going to say that we’re being alarmist,” says Adler, “that’s fine, as long as they provide an explanation that we can understand and rely on. That’s what’s been missing from this entire discussion.”

Regardless of whether libraries and schools are affected, the CPSIA is poised to take a massive bite out of the book industry. Large retailers are beginning to demand that publishers comply, even in advance of the law’s deadline. This Wednesday, Amazon.com

sent a general letter informing its vendors that, if they did not certify their products by January 15, the items would be returned at the sellers' expense.

Like their peers in the toy and garment industries, many sellers of children's books are just beginning to try to understand how the CPSIA will affect their businesses.

"All of us are totally in the dark," says Terri Schmitz, owner of the Children's Book Shop in Brookline. "I can't make a decision, because I don't know what the regulations are. We're all sort of in limbo here."

Libraries may yet escape unscathed. The CPSIA is changing rapidly as the CPSC scrambles to clarify the confusing lead law before it goes into effect. Thrift stores, consignment shops, and other used-goods stores got a partial reprieve yesterday in a hastily drafted CPSC memo: While resellers still face stiff civil and criminal penalties if they sell lead-contaminated items, used goods will not have to be tested for lead.

In lieu of actual testing, the memo urged resellers to "pay special attention to certain product categories," like jewelry and painted toys, which are "likely to have lead content."

Which prompts the obvious question: If other children's products aren't likely to contain lead, why is the CSPC regulating them?

From the sweeping language of the law, it appears Congress left them no choice. The Act covers any "consumer product designed or intended primarily for children 12 years of age and younger."

"Consider for a minute that a twelve-year-old is a junior high school student," says Adler. "This is not somebody who is likely to be chewing or sucking on a book."