

INTELLECTUAL FREEDOM IN PUBLIC LIBRARIES

by Joe Landrum and Dorothy White

THE UNIQUENESS OF A PUBLIC LIBRARY

The public library has been called the people's university. It provides materials and information in every conceivable format to people of all ages and socioeconomic and education levels. It serves people of every ethnic background, and of all political and religious persuasions.

The public library's broad mission to serve all people makes it a unique institution. Everyone owns the public library, and thus it differs from school, academic, and special libraries serving specific and easily definable clienteles.

Public libraries are tax supported institutions; in fact, they are institutions faced with winning voter approval for the taxes which support them. In Louisiana, public libraries are governed by politically appointed board members, who ultimately answer to local governing authorities. For these reasons, public libraries must operate with an eye to community standards and public opinion.

WHAT ARE SOME PUBLIC LIBRARY INTELLECTUAL FREEDOM ISSUES?

The Internet

The question of whether or not to filter the Internet is perhaps the most complicated intellectual freedom issue facing public libraries today. Louisiana is a conservative state; most of the communities in which libraries are located will not tolerate pornography. At the same time, the American Library Association (ALA) “. . . affirms that the use of filtering software . . . violates the Library Bill of Rights.”

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In addition, libraries have come to depend on the Universal Services Discount (the e-rate) to help defray connectivity charges at a time when legislation before Congress would deny these discounts to libraries refusing to filter children's work stations. The situation is complicated and difficult for public libraries.

People's concern for the welfare of children makes Internet access more problematic for public libraries than for academic or special libraries, where the clientele is for the most part adult, or for school libraries, where the school acts *in loco parentis*. At a public library, parents often drop off their children, leaving them unsupervised in an environment where adults are accessing any and all kinds of materials on the Internet—some of these materials perhaps questionable.

There is the potential for lawsuits and legal challenges, whether the public library chooses to filter or not to filter. In Loudoun County, Virginia, for example, when a citizen's group challenged the public library for having filtered all its Internet stations, the court found the library at fault because it had left no unfiltered public work stations available for adults. In

Livermore, California, court rulings validated the Livermore Public Library's existing policy of free and open access to the Internet when a woman filed a lawsuit alleging that the Library's open Internet policy "constituted a public nuisance, a waste of public funds, and a dangerous condition of property."²

Despite conservative standards, the necessity for voter approval of operating taxes, potential dangers and nuisances, and the possibility of lawsuits, few libraries in Louisiana have chosen to filter.

Videos

Another thorny issue which public libraries face is that of video access for minors. If a library follows the guidelines set forth in "Access for Children and Young People to Videotapes and Other Nonprint Formats: An Interpretation of the *Library Bill of Rights*"³, the library will not act *in loco parentis*. This means that librarians can be put in the position of circulating videos to children who are barred from seeing the same films in theatrical release under the voluntary standards of the Motion Picture Association of America (MPAA).

Collection Development, including video labeling

The public library collection must anticipate and meet the needs and interests of *all* populations served. In order to guard against in-house censorship, the individuals charged with collection development must divorce themselves from their own prejudices, beliefs, and biases when selecting materials for the library collection. Selection personnel must approach the task with an attitude of inclusiveness rather than exclusiveness, and select materials as widely as possible from a variety of publishers, including those beyond the mainstream. One should beware when selecting materials not to censor by omission.

The processing of a video collection brings with it special problems. Videos often come with MPAA ratings printed on the package and on the tape. Altering these materials to eliminate the ratings could constitute expurgation, another form of censorship; and conversely, when such ratings do not appear on the package or tape, affixing them there could constitute labeling.

Exhibits, meeting rooms and bulletin boards

Until 1988, public libraries often limited the use of their meeting rooms to meetings held for cultural, recreational, or educational purposes, and disallowed the use of the meeting room for commercial purposes; however, when the public library in Oxford, Mississippi, refused the use of its meeting room to a women's organization wishing to hold a prayer meeting, the group challenged the decision. The United States District Court for the Northern District of Mississippi ruled that through past permissiveness, the library had created a limited public forum, and thus could not restrict access to its auditorium based upon the content of the proposed meeting.⁴ and *Jolene Cox v. Lafayette County and Oxford Public Library*, 699 F.Supp. 95 (US District Court for the Northern District of Mississippi, WD, No. WC88-98-NB-D, Sept. 16, 1988). Today, if a library opens its meeting room for public use, it cannot restrict the content of a meeting or the ideas expressed therein. *Meeting Rooms: An Interpretation of the Library Bill of Rights*, suggests

that “Libraries may wish to post a permanent notice near the meeting room stating that the library does not advocate or endorse the viewpoints of meetings or meeting room users.”

A library’s bulletin boards and exhibits should reflect the diversity of the community; and as such, intellectual freedom issues may well arise. Requests for the use of exhibit spaces and bulletin boards should be held to the same standards as requests for use of meeting rooms; that is, materials should not be removed or excluded because of content or because of the beliefs or affiliations of those requesting the exhibit space.⁰

RESPONSES TO INTELLECTUAL FREEDOM ISSUES

1. Policies

As a means of successfully responding to intellectual freedom challenges, libraries often create, implement, and follow procedures and policies. Of course, the best time to write a policy is before a problem arises. A library that enforces a new or existing policy retroactively in response to a specific incident may compound its legal and ethical problems. Relevant topics for policies include the following: audiovisual circulation, Internet, meeting rooms, exhibits, bulletin boards, behavior, confidentiality, and collection development. However, exemplary policies adopted and set in place will prove ineffective unless the board of trustees, the administration, and staff understand the policies’ contents and are educated in and committed to the tenets of intellectual freedom.

2. Confidentiality Law

A library must protect the confidentiality of a patron’s use records. In addition to the ALA recommendation that libraries adopt policies to protect this confidentiality⁶, Louisiana state law addresses the issue of the confidentiality of such records in Louisiana Revised Statutes 44:13(A). This law prohibits publicly supported libraries from disclosing an individual’s circulation records (and by inference, his Internet usage records) with these exceptions: a parent or guardian seeking access to a minor’s records, a person acting within the scope of his duties in administration of the library, a person authorized by the individual in question to inspect such records, or a person authorized by court order. A recent Attorney General opinion reaffirmed that despite the fact that Internet usage records fall within the definition of public records, any information linking a specific record to an individual must be deleted, thus reinforcing the individual’s right to privacy.⁷

3. Internet

As for the public library’s response to Internet use by minors, the library often looks to ALA for guidance. To ensure appropriate uses of the Internet by children in public libraries, ALA suggests mechanisms such as child friendly search engines, parent education, and acceptable use policies. In addition, ALA points out that the public library provides a uniquely welcoming environment to parents who wish to supervise their children’s use of resources. For guidance in helping children use the Internet safely, access the ALA “Libraries and the Internet Toolkit” at <http://www.ala.org/internettoolkit/>.

4. Handling Complaints

The wise administrator will forestall complaints by making sure that intellectual freedom policies and procedures are in place and followed by staff. Often, the act of simply filling out a Request for Reconsideration of Library Materials form will make a thoughtful patron aware of the far reaching consequences of removing a book from the shelf.

¹ Adopted by the American Library Association Council, July 2, 1997.

² Press Release, January 14, 1999, Livermore Public Library, commenting on decision in the case of Kathleen R. v. City of Livermore.
<http://www.techlawjournal.com/courts/kathleenr/19990114.htm>, last visited September 5, 2000.

³ American Library Association, *Intellectual Freedom Manual*, 5th ed. (Chicago: ALA, 1996), 20-22.

⁴ Concerned Women for America Education and Legal Defense Foundation, Inc. (CWA)

⁰⁵ “Exhibit Spaces and Bulletin Boards: An Interpretation of the Library Bill of Rights,” ALA *Intellectual Freedom Manual*, 1996.

⁶ ALA Policy Manual in the *ALA Handbook of Organization* (1994-95) Chicago: ALA, 1994.

⁷ La. Attorney General Opinion No. 98-596, January 13, 1999.