

INTELLECTUAL FREEDOM ISSUES IN PUBLIC LIBRARIES

by Dr. Margaret Wilhite

“Any society that would give up a little liberty to gain a little security will deserve neither and lose both.”

-- Benjamin Franklin (1706-1790)

THE BALANCING ACT

Knowledge, information, ideas, opinions -- danger lurks in each of them, and yet, these are the very bases of public library service. Bringing people together with the information they need and want when they need it and when they want it, depends on the complementary constitutional rights of freedom of access to ideas and the right to privacy. Academic, school, corporate, and special libraries each serve special clientele who have specialized needs. Public libraries, by contrast, must serve the competing interests and belief systems of the entire community. At the same time, public libraries must win voter approval for the taxes that allow them to operate. This can be a delicate balancing act, one now made more difficult by new laws that expand government surveillance and restrict access to information.

ACCESS TO INFORMATION

Intellectual freedom cannot exist without access to information. The First Amendment guarantees individuals the right to hold and express any ideas, but this right is meaningless if others do not have the right to hear, read, or view those ideas. Libraries serve the needs of individuals to have access to ideas by providing access to various media of expression. Each medium presents its own unique challenges to access.

The Internet

Foremost among issues of intellectual freedom facing public libraries today is the question of Internet access. Most libraries recognize the importance of providing Internet access to their patrons, but the details of how to provide it can be problematic.

In many libraries, requiring express parental consent for Internet access is considered insurance that parents can control the information their children can access. In other libraries, children are allowed free-ranging Internet access unless their parents explicitly request that it be denied. Librarians see these methods as less intrusive ways of helping maintain parental control. Still other librarians place no restriction on children's Internet access, arguing that the only way for parents to maintain control is by accompanying and monitoring their children in the library.

NCIPA (Neighborhood Children's Internet Protection Act) requires libraries receiving E-rate discounts to adopt and implement an Internet safety policy for minors that addresses their access to inappropriate material; their safety and security when using forms of direct electronic communication such as email; unauthorized activities by minors, including "hacking,"; and the disclosure, use, and dissemination of personally identifiable information.^a

The Children's Internet Protection Act (CIPA) requires the use of filter software in libraries that receive E-rate discounts^b and/or Library Services and Technology Act (LSTA) grant funds.^c The filtering software must be operational at all times on all library computers, including those used by adult patrons and library staff. Filters on public use computers may be disabled upon request "for bona fide research or other legal purpose."^d In ruling on the constitutionality of CIPA the Supreme Court added an additional layer of uncertainty for librarians when it declared that requiring filters does not impinge on constitutionally-protected freedoms since any librarian can turn off any filter for any adult.^e

Very few public libraries today have a choice about filtering since few have the luxury of doing without E-rate discounts. The issue facing public libraries now is how to filter without abridging intellectual freedom. If filtering is overbroad, adults and older children may have difficulty retrieving the information they need; if it is too narrow, parents may feel that their children are not adequately protected. In legal terms, CIPA standards vary for adults and children. Adult access to visual depictions judged obscene under the federal obscenity statute^f and to child pornography as defined by 18 U.S.C. §2256 must be filtered, whereas

children's access must be filtered of visual depictions "harmful to minors."^g Any other filtering exceeds the requirements of CIPA.

Librarians have long held that the individual taste of patrons alone should dictate access to library materials; parents or guardians may circumscribe access when the individual is a minor over whom they have authority. Internet filters take choice away from library users and allow software designers and third party vendors to judge what is best for our patrons to see. Neither librarians nor their patrons can find out how or why information is being filtered because under many licensing agreements the methodology of filtering and the sites that are filtered remain the property of the vendor.

No filtering software is perfect. Sites may be blocked without clear reason, while others that violate CIPA standards get through. The Web is too vast and dynamic for any individual or organization to monitor it completely. Indeed, filtering can have the unexpected side effect of undermining parental control because parents assume that all harmful materials are being blocked and personal checking is unneeded.

In ruling on the constitutionality of CIPA, the Supreme Court noted that filters can be turned off for adult patrons, but the Court did not take into account that children who are nearby may, intentionally or unintentionally, end up viewing unfiltered material. Thus, CIPA's intention to protect children may be undermined, and librarians will have to balance right of access for adult patrons against the possibility that a child may be unexpectedly harmed.

Moreover, adult patrons may not realize that they can ask to have filters turned off. Others may know but be too embarrassed to ask. To alleviate this situation, libraries must make a clear statement regarding adult access to unfiltered materials and post a notice as necessary.

Other Matters of Concern

Although the Internet currently generates the most interest and outrage in debates over censorship, other library materials are being challenged continuously. Lest we forget, books are still being challenged. Carefully crafted selection policies, when implemented consistently, can ensure that choices will be made for content quality and a balanced collection.

Video access for minors can sometimes be a thorny issue for public libraries. If libraries restrict access to videos, librarians will be expected to act *in loco parentis*. If access is unrestricted, children may see movies that they would not be allowed to view in theaters. Librarians must resist the temptation to place labeling additional to the Motion Picture Association of America parental guidance ratings.

What about exhibits, meeting rooms, and bulletin boards? Libraries cannot discriminate between groups wishing to use meeting space routinely available for public use, nor can they restrict usage based on the proposed content of meetings.^h Experience shows that libraries would do well to establish similar guidelines for access to exhibit space and bulletin boards.

Libraries employ security guards to protect patrons, but patrons may be intimidated by the guards' presence. Security guards must not monitor what patrons view or attempt to impose their own standards on patrons.

Access to information does not provide full intellectual freedom without the corresponding right to privacy guaranteed by the Fourth Amendment. If an individual's reading, listening, and viewing habits are monitored by law enforcement or others, intimidation may limit access.

The greatest challenge to patron privacy currently faced by libraries is §215 of the U.S.A. P.A.T.R.I.O.T. Act, under which library records are viewed as "business records," and are thus subject to search by federal authorities conducting foreign intelligence or international terrorism investigations.ⁱ Librarians must understand that only FBI agents, not local law enforcement officers, can demand to see library records, and they must have a warrant issued by a special court acting under the auspices of the Foreign Intelligence Surveillance Act (FISA).

Librarians are expressly forbidden to inform patrons that their records have been seized under FISA Court order. Notices regarding the vulnerability of library records to seizure under the PATRIOT Act may make some patrons uneasy, but the lack of such notices will give patrons a false sense of security.

Louisiana Laws on Patron Confidentiality

Despite a recent weakening of Louisiana laws protecting patron privacy, patron records are still protected. Louisiana Revised Statutes, Title 44, Chapter 1, Section 13 prohibits publicly funded libraries from disclosing patron records, with five exceptions: (1) The parent or guardian of a minor child may examine that child's records; (2) "Persons acting within the scope of their duties in the administration of the library" may have access; (3) Anyone given written authority by a patron may see that patron's records; (4) Anyone granted authority by a court order may see the records covered by the order; and (5) "law enforcement officers investigating criminal activity in the library witnessed by an employee or patron of the library and reported by the administrative librarian" may view the records.

Records retention

Because of the greater access that law enforcement officials now have to library records, it is important for libraries to have written policies regarding the retention of the records. Records retention policies should cover circulation records, patron registration records, computer use logs, backup tapes, and any other records containing personally identifiable information. These policies should detail how long and under what circumstances records are retained. As an added precaution, the library should completely erase or remove the hard drives on computer equipment that is being discarded.

Awareness and Training

The library staff is the front line in creating an atmosphere of intellectual freedom and responding to any challenges to that freedom. Since some public library staff members may not have professional training regarding intellectual freedom issues, it is important to teach them not to impose their own ideas and preferences on patrons or material selection. It is equally important that they know how to respond to intellectual freedom challenges and requests for confidential information.

Trustees function in the public arena also, and so must be educated that they cannot impose their personal beliefs and preferences on the library. They must be prepared to support the efforts of librarians in protecting the patron privacy and resisting censorship.

The public must be educated that library users have the right to access materials others may personally find objectionable. Librarians must help parents to understand that they cannot impose the standards they set for their own children on other people's children.

Intellectual freedom events such as Banned Books Week can play an important role in raising awareness of these issues. Clearly posted privacy and filtering notices can also help to educate staff, trustees and the public. In the ongoing effort to provide people with the information they need when they need it, intellectual freedom must be the guiding principle in an ongoing dialogue between library administrators, trustees, staff, and library clientele.

- a Children's Internet Protection Act (CIPA), Title XVII, §1732.
- b Ibid., §1721.
- c Ibid., §1712.
- d Ibid., §1721.
- e United States, et al. v. American Library Association, Inc. et al., 539 U.S. 194, 123 S.Ct. 2297, 156 L.Ed.2d 221 (2003).
- f 18 USC §1460.
- g CIPA, §1703.
- h US District Court for the Northern District of Mississippi, WD, No. WC88-98-NB-D, Sept. 16, 1988.
- i Don Essex, "Opposing the USA PATRIOT Act: The Best Alternative for American Librarians," *Public Libraries* 43, no. 6 (November/December 2004): 331-340.

ETHICS STATEMENT FOR PUBLIC LIBRARY TRUSTEES

Trustees in the capacity of trust upon them, shall observe ethical standards with absolute truth, integrity and honor.

Trustees must avoid situations in which personal interests might be served or financial benefits gained at the expense of library users, colleagues, or the situation.

It is incumbent upon any trustee to disqualify himself/herself immediately whenever the appearance or a conflict of interest exists.

Trustees must distinguish clearly in their actions and statements between their personal philosophies and attitudes and those of the institution, acknowledging the formal position of the board even if they personally disagree.

A trustee must respect the confidential nature of library business while being aware of and in compliance with applicable laws governing freedom of information.

Trustees must be prepared to support to the fullest the efforts of librarians in resisting censorship of library materials by groups or individuals.

Trustees who accept library board responsibilities are expected to perform all of the functions of library trustees.

Adopted by the Board of Directors of the American Library Trustee Association, July, 1985.

Adopted by the Board of Directors of the Public Library Association, July, 1985.

Amended by the Board of Directors of the American Library Trustee Association, July, 1988.

Approval of the amendment by the Board of Directors of the Public Library Association, January, 1989.

American Library Trustee Association (ALTA), a division of the American Library Association, <<http://www.ala.org/ala/alta/altapubs/PDFaltaethicsstatement.pdf>> (October 5, 2005).

