

GUIDELINES AND CONSIDERATIONS FOR DEVELOPING A PUBLIC LIBRARY INTERNET USE POLICY

Intellectual Freedom's Meaning and Scope

Libraries are the information source in our society. They link individuals with the knowledge, information, literature, and other resources people seek. It is never libraries' role to keep individuals from what other people have to say.

By providing information and ideas across the spectrum of social and political thought, and making these ideas and information available and accessible to anyone who wants or needs them, libraries allow individuals to exercise their First Amendment right to seek and receive all types of information, from all points of view. Materials in any given library cover the spectrum of human thought, some of which people may consider to be untrue, offensive, or even dangerous.

In the vast amount of information on the Internet, there are some materials—often loosely called “pornography”—that parents, or adults generally, do not want children to see. A very small fraction of those sexually explicit materials is actually obscenity or child pornography, materials not constitutionally protected. The rest fall within the overwhelming majority of materials on the Internet protected by the First Amendment.

Obscenity and child pornography are illegal. Federal and state statutes, the latter varying slightly depending on the jurisdiction, proscribe such materials. The U.S. Supreme Court has settled most questions about what obscenity and child pornography statutes are constitutionally sound.

According to the Court:

Obscenity must be determined using a three-part test. To be obscene, (1) the average person, applying contemporary community standards, must find that the work, taken as a whole, appeals to prurient interests; (2) the work must depict or describe, in a patently offensive way, sexual conduct as specified in the applicable statutes; and (3) the work, taken as a whole, must lack serious literary, artistic, political, or scientific value.

Child pornography may be determined using a slightly less rigorous test. To be child pornography, the work must involve depictions of sexual conduct specified in the applicable statutes and use images of children below a specified age.

Many states and some localities have “harmful to minors” laws. These laws regulate free speech with respect to minors, typically forbidding the display or dissemination of certain sexually explicit materials to children, as further specified in the laws.

According to the U.S. Supreme Court:

Materials “harmful to minors” include descriptions or representations of nudity, sexual conduct, or sexual excitement that appeal to the prurient, shameful, or morbid interest of minors; are patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and lack serious literary, artistic, political, or scientific value for minors.

Knowing what materials are actually obscenity or child pornography is difficult, as is knowing, when minors are involved, and what materials are actually “harmful to minors.” The applicable statutes and laws, together with the written decisions of courts that have applied them in actual cases, are the only official guides. Libraries and librarians are not in a position to make those decisions for library users or for citizens generally. Only courts have constitutional authority to determine, in accordance with due process, what materials are obscenity, child pornography, or “harmful to minors.”

Obscenity and child pornography statutes apply to materials on the Internet; such materials are currently being regulated there. The applicability of particular “harmful to minors” laws to materials on the Internet is unsettled, however. Because of the uncertainty, various federal and state legislative proposals are pending specifically to “protect” children from sexually explicit materials on the Internet.

Intellectual Freedom’s First Amendment Foundations

Courts have held that the public library is a “limited public forum.” “Limited” means it is a place for access to free and open communication, subject to reasonable restrictions as to the time, place, and manner for doing so. As with any public forum the government has opened for people to use for communication, the First Amendment protects people’s right to use the forum without the government interfering with what is communicated there. This is the very essence of the Constitution’s guarantee of freedom of speech.

In a public forum, the government is prohibited from exercising discrimination with respect to the content of communication, unless the government demonstrates that the restriction is necessary to achieve a “compelling” government interest and there is no less restrictive alternative for achieving that interest. This means public libraries cannot exclude books about abortion just because they discuss the subject of abortion. That would be discrimination with respect to content. Books can be selected on the basis of content-neutral criteria such as the quality of the writing, their position on best-seller lists, the presence or absence of other materials in the collection related to certain time periods or historical figures, and the like; they can be deselected on the basis of wear and tear, the availability of more current materials, and similar criteria. Libraries, however, cannot deliberately suppress the record of human thought on a particular subject or topic.

Filtering and other means to block content on the Internet are mechanisms that allow discrimination with respect to the content of communication. Filters are notoriously inept at doing what computer software engineers have designed them to do—typically, block “hard-core

pornography” and other “offensive” sites on the Internet. But even at their hypothetical best, mechanisms to screen and block content on the Internet exclude far more than just obscenity and child pornography. They exclude a wide range of sexually explicit materials protected under the Constitution. For instance, materials that depict homosexual relations, variations on conventional heterosexuality, and even nudity and heterosexual relations channeled toward reproduction and family life represent distinct subjects or topics. Their suppression is discrimination with respect to the content of communication.

Filtering and other means to block content on the Internet only can be utilized if the government—in this case, the public library—can demonstrate both that the need is compelling and that the method chosen to achieve the purpose is the least restrictive method possible. The lawsuit brought by the American Library Association—American Library Ass’n v. United States Department of Justice, consolidated with and decided by the U.S. Supreme Court under the name of Reno v. American Civil Liberties Union—invalidated the provisions of the Communications Decency Act of 1996 that criminalized “indecent” and “patently offensive” electronic communication. The Court did so on the ground that those provisions, suppressing speech addressed to adults, reduced the entire population only to what is fit for children. It recognized “the governmental interest in protecting children from harmful materials,” but found that less restrictive means were available to achieve that interest. In the context of limiting or avoiding children’s exposure to possibly “harmful” materials on library computers with Internet access, less restrictive means than the use of filters are available.

It is well documented that filtering software is over-inclusive, blocking not only sites that may have sexual content, strong language, or unconventional ideas considered harmful or offensive—but also sites having no controversial content whatsoever. Filters are known to have blocked Web pages of the Religious Society of Friends (Quakers), the American Association of University Women, the Banned Books page at Carnegie Mellon University, the AIDS Quilt site, the Fileroom Project censorship database, and even the conservative Heritage Foundation. The fact that the site covering the recent Mars exploration was blocked by certain software because the URL contained “marsexpl” shows how crude the filtering technology truly is. Over-inclusive blocking violates the First Amendment rights of youth and children, as well as adults, to access constitutionally protected materials.

Adults cannot be reduced to the level of what is fit for children, and the public library, therefore, cannot restrict them to Internet-access computers with filtering software. Young adults and children also have First Amendment rights, although such rights are variable, depending on the age of the minor and other factors, including maturity, not yet settled in the law. Even though minors’ First Amendment rights are not as extensive as those of adults, the public library cannot restrict them solely to computers with filtering software. Libraries favor parents’ control of their children’s use of the Internet. Only unfiltered Internet access accommodates both parental control and sensitive recognition of the First Amendment rights of young people.

Librarians and the strength of their commitment to professional standards and values assure that, at least through the public library, the least restrictive means available to achieve the government’s interest in protecting children will be implemented.

Specific Internet Use Policy Provisions

The position of the American Library Association is set forth in several documents adopted by the Council, its governing body. The *Interpretation of the Library Bill of Rights* entitled *Access to Electronic Information, Services, and Networks* calls for free and unfettered access to the Internet for any library user, regardless of age. The *Resolution on the Use of Filtering Software in Libraries* and the *Statement on Library Use of Filtering Software* reiterate the U.S. Supreme Court's declaration in *Reno v. American Civil Liberties Union* that the Internet is a forum of free expression deserving full constitutional protection. The *Resolution* and *Statement* condemn as a violation of the *Library Bill of Rights* any use of filtering software by libraries that blocks access to constitutionally protected speech.

Consistent with these policies, which collectively embody the library profession's understanding of First Amendment constraints on library Internet use, the Intellectual Freedom Committee offers guidelines to public libraries, as follows:

- Adopt a comprehensive, written Internet use policy that, among other things, sets forth reasonable time, place, and manner restrictions. Expressly prohibit any use of library equipment to access material that is obscene, child pornography, or "harmful to minors" (consistent with any applicable state or local law).
- Communicate the relevant policies for use of Internet-access computers to all library users, and include the parents of children who may use the library without direct parental supervision. Do so in a clear and conspicuous manner sufficient to alert library users that filtering software is not utilized.
- Post notices at all Internet-access computers that use of library equipment to access the illegal materials specified in the Internet use policy is prohibited.
- Offer a variety of programs, at convenient times, to educate library users, including parents and children, on the use of the Internet. Publicize them widely.
- Offer library users recommended Internet sites. For youth and children, especially, offer them, according to age group, direct links to sites with educational and other types of material best suited to their typical needs and interests (*e.g.*, the American Library Association's 700+ *Great Sites for Kids and the Adults Who Care About Them* and its Internet guide for young adults, *TEENHoopla*).

Answers to Objections

Various metaphors have been offered, both by opponents of free and open access in libraries, as well as proponents, to explain the use of the Internet in libraries and the impact of filtering software. Two metaphors offered by opponents and the arguments built around them deserve close examination:

The “selection” metaphor. Filtering Internet resources is tantamount to selecting materials in a library. Since libraries, opponents of unfettered Internet access say, are not constrained to select any particular materials for their collections, filtering is constitutionally unobjectionable.

This metaphor is faulty. Filtering the Internet is not selecting materials. The only selection decisions involved in use of the Internet in libraries are those as to whether, for instance, the World Wide Web will be offered with other tools based on special Internet protocols, *e.g.*, *ftp* (file transfer protocol) or *telnet*. Selecting the World Wide Web for the library means selecting the entire resource, just as selecting *Time* means selecting the entire magazine. A library cannot select *Time* and then decide to redact or rip out the pages constituting the “American Scene” feature or the “Washington Diary.” That would be censorship. It is the same with the World Wide Web. It is not an accident of terminology that the Web consists of a vast number of Web *pages* and that browser software permits the user to *bookmark* those that are interesting or useful.

The “interlibrary loan” metaphor. Internet access is tantamount to interlibrary loan service. Typing a Web site URL into a browser’s location entry box and pressing the <Enter> key amounts to an interlibrary loan request that the library, opponents of unfettered access say, is free to deny.

This metaphor is faulty, too. Far more frequently than typing and entering URLs, surfers of the World Wide Web click on hot links for automatic access to the Web pages they wish to see. More significantly, absent financial constraints, any public library true to its function as a public forum makes available to users any constitutionally protected material, whether that means locating the material within the library itself or obtaining it elsewhere through interlibrary loan.

As articulated by the U.S. Supreme Court in the American Library Association case culminating in Reno v. American Civil Liberties Union, the Internet represents a vast library. It is a virtual library already present within any public library that selects Internet access. The fundamental First Amendment question is: given the free availability of a near-infinite range of content on the Internet, can the library ever deliberately deprive a library user of the constitutionally protected materials he or she seeks? The emphatic answer of the librarian informed by principles of intellectual freedom is: absolutely not.

But what about obscenity and child pornography, as well as, when minors are involved, materials “harmful to minors”?

- As for obscenity and child pornography, prosecutors and police have adequate tools to enforce criminal laws. Libraries are not a component of law enforcement efforts naturally directed toward the source, *i.e.*, the publishers, of such material.
- As for materials “harmful to minors,” it is true that, in some jurisdictions, libraries that choose not to utilize filtering or other means to block content on the Internet may find themselves in a “bind”; under some circumstances, they may be subject to liability under “harmful to minors” laws.

Libraries should be cautioned that laws differ from state to state, and they should seek advice on laws applicable in their jurisdiction from counsel versed in First Amendment principles. In particular, they should determine whether any “harmful to minors” law applies to materials available at the library, either through Internet access or otherwise. They should specifically inquire whether they are expressly exempt from the particular “harmful to minors” laws in their jurisdiction, as libraries frequently are.

Moreover, libraries should be aware that the legal framework and context of regulation is rapidly changing; federal, state, and local governments have begun to legislate specifically in the area of library Internet use. Libraries should actively oppose proposed legislation that exposes them to new liabilities and negatively impacts intellectual freedom. As always, they should be vigilant about new regulations of free speech.