

newsletter on intellectual freedom



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over-filtering harms education, new ALA report finds

Schools and libraries nationwide are routinely filtering Internet content far more than what the Children’s Internet Protection Act (CIPA) requires, according to “Fencing Out Knowledge: Impacts of the Children’s Internet Protection Act 10 Years Later,” a report released June 11 by the American Library Association (ALA). CIPA requires public libraries and K-12 schools to employ Internet filtering software to receive certain federal funding.

“Over-filtering blocks access to legitimate educational resources, and consequently reduces access to information and learning opportunities for students,” said Barbara Stripling, ALA president. For example, some school districts block access to websites containing information about foreign countries, such as China and Iran, even as those websites are required online reading for the Advanced Placement curriculum.

“Today’s over-implementation of Internet filtering requirements have not evolved in the past decade to account for the proliferation of online collaborative tools and social networks that allow online students to both consume and produce content,” said Courtney Young, ALA president-elect.

“Filtering hurts poor children the most,” said Young. “These children are the most likely to depend on school- and library-provided Internet access. Other children are likely to have unfiltered Internet access at home or through their own mobile devices.” There are 60 million Americans without access to either a home broadband connection or a smartphone.

Finally, schools that over-filter restrict students from learning key digital readiness skills that are vital for the rest of their lives. Over-blocking in schools hampers students from developing their online presence and fully understanding the extent and permanence of their digital footprint.

“Filtering beyond CIPA’s requirements results in critical missed opportunities to prepare students to be responsible users, consumers, and producers of online content and resources,” the report states. “Limits on access to the wide range of Internet-based resources during students’ formative years are closing doors to future opportunity.”

“Fencing Out Knowledge” finds that librarians, as curators of digital information and trained instructors, are uniquely positioned to develop and implement changes in acceptable Internet use policies. The report makes several recommendations, including

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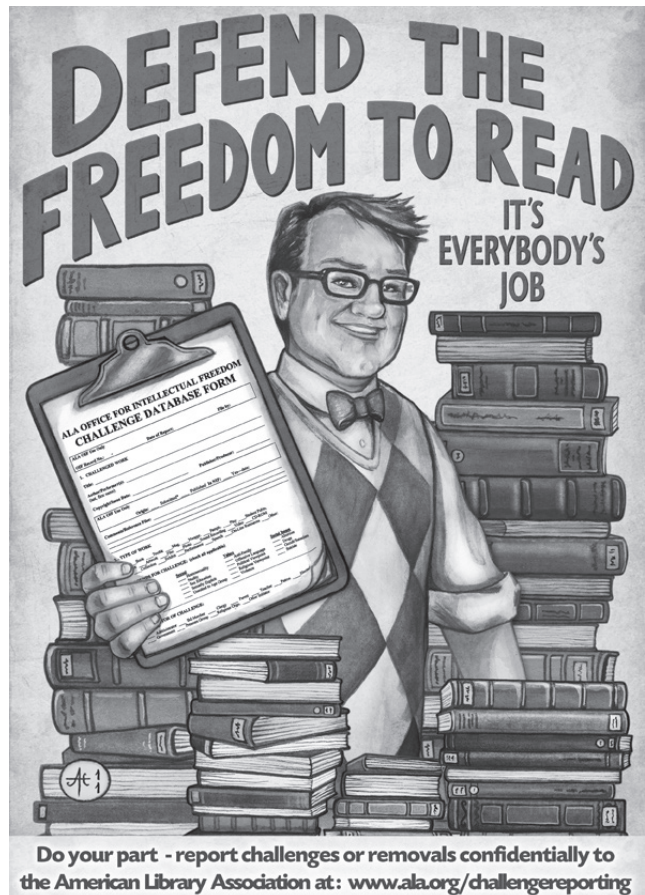
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ALA brings library lens to net neutrality debate

On July 18, the American Library Association (ALA) urged the Federal Communications Commission (FCC) to adopt the legally enforceable network neutrality rules necessary to fulfill library missions and serve communities nationwide. The ALA joined ten other national higher education and library organizations in filing joint public comments with the FCC.

“Network neutrality strikes at the heart of library core values of intellectual freedom and equitable access to information,” said ALA President Courtney Young. “We are extremely concerned that broadband Internet access providers currently have the opportunity and financial incentive to degrade Internet service or discriminate against certain content, services and applications.

“America’s libraries collect, create and disseminate essential information to the public over the Internet, and enable our users to create and distribute their own digital content and applications,” Young continued. “For all these reasons and many more, the rules to be set by the FCC will have an enormous impact on our public, K-12 school, and higher education libraries—as well as our students, educators, researchers, innovators, and learners of all ages.”

The joint comments build on network neutrality principles released July 10 (see article on “higher ed, library groups release “net neutrality” principles” on page 112) and suggest ways to strengthen the FCC’s proposed rules (released May 15, 2014) to preserve an open Internet for libraries, higher education and the communities they serve. For instance, the FCC should:

- explicitly apply open Internet rules to public broadband Internet access service provided to libraries, institutions of higher education and other public interest organizations;
- prohibit “paid prioritization”;
- adopt rules that are technology-neutral and apply equally to fixed and mobile services;
- adopt a re-defined “no-blocking” rule that bars public broadband Internet access providers from interfering with the consumer’s choice of content, applications, or services;
- further strengthen disclosure rules;
- charge the proposed ombudsman with protecting the interests of libraries and higher education institutions and other public interest organizations, in addition to consumers and small businesses;
- continue to recognize that libraries and institutions of higher education operate private networks or engage in end user activities that are not subject to open Internet rules; and
- preserve the unique capacities of the Internet as an

open platform by exercising its well-established sources of authority to implement open Internet rules, based on Title II reclassification or an “Internet reasonable” standard under Section 706.

“Taken together, we believe our comments highlight the vital intersection of our public interest missions and the democratic nature of a neutral Internet,” Young said. “The American Library Association is proud to stand with other education and learning organizations in outlining core principles for preserving the open Internet as a vital platform for free speech, innovation, and civic engagement.”

Over half a million Americans have shared their ideas on net neutrality with the FCC as the commission ponders new rules that could drastically reshape the Internet. FCC Chair Tom Wheeler reported that the FCC had received around 647,000 comments as the July 15th deadline for initial feedback approached. The commission will then accept responses to those comments into the month of September. At best, a final decision on the controversial net neutrality proposal isn’t expected until near the end of this year.

The FCC is considering new rules in response to a late 2013 decision by the U.S. Court of Appeals for the District of Columbia invalidating previous FCC rules that upheld net neutrality. At the time then-ALA President Barbara Stripling issued the following statement:

“The American Library Association is extremely disappointed with today’s decision by the D.C. Circuit Court of Appeals to strike down the FCC’s ‘Net Neutrality’ decision. ALA has been a long-time supporter of the free flow of information for all people. Now that the Internet has become the primary mechanism for delivering information, services and applications to the general public, it is especially important that commercial Internet Service Providers are not able to control or manipulate the content of these communications.

“The court’s decision gives commercial companies the astounding legal authority to block Internet traffic, give preferential treatment to certain Internet services or applications, and steer users to or away from certain web sites based on their own commercial interests. This ruling, if it stands, will adversely affect the daily lives of Americans and fundamentally change the open nature of the Internet, where uncensored access to information has been a hallmark of the communication medium since its inception.

“Public libraries have become leading providers of public Internet access, providing service to millions of students, elderly citizens, people seeking employment and many others every single day. Approximately 77 million people use public library Internet access every year. These users of libraries’ Internet services, and people all across the country, deserve equal access to online information and services.

“The ability of the Internet to spread and share ideas is only getting better. With modern technology, individuals and small groups can produce rich audio and video

resources that used to be the exclusive domain of large companies. We must work to ensure that these resources are not relegated to second-class delivery on the Internet—or else the intellectual freedoms fostered by the Internet will be seriously constrained. ALA will work with policy-makers and explore every avenue possible to restore the long-standing principle of nondiscrimination to all forms of broadband access to the Internet.” □

higher ed, library groups release “net neutrality” principles

On July 10 a group of eleven higher education and library organizations representing thousands of colleges, universities, and libraries nationwide released a joint set of Net Neutrality Principles they recommend form the basis of an upcoming Federal Communications Commission (FCC) decision to protect the openness of the Internet. The groups believe network neutrality protections are essential to protecting freedom of speech, educational achievement, and economic growth.

The organizations endorsing these principles are: American Association of Community Colleges (AACC); American Association of State Colleges and Universities (AASCU); American Council on Education (ACE); American Library Association (ALA); Association of American Universities (AAU); Association of Public and Land-grant Universities (APLU); Association of Research Libraries (ARL); Chief Officers of State Library Agencies (COSLA); EDUCAUSE; Modern Language Association (MLA); National Association of Independent Colleges and Universities (NAICU).

The following is the full text of the statement of principles:

The above organizations firmly believe that preserving an open Internet is essential to our nation’s freedom of speech, educational achievement, and economic growth. The Internet now serves as a primary, open platform for information exchange, intellectual discourse, civic engagement, creativity, research, innovation, teaching, and learning. We are deeply concerned that public broadband providers have financial incentives to interfere with the openness of the Internet and may act on these incentives in ways that could be harmful to the Internet content and services provided by libraries and educational institutions. Preserving the unimpeded flow of information over the public Internet and ensuring equitable access for all people is critical to our nation’s social, cultural, educational, and economic well-being.

Our organizations have joined together to provide the following background information and to set forth the key principles (below) that we believe the Federal Communications Commission (FCC) should adopt as it reconsiders its

“net neutrality” policies in response to the recent court decision. We invite others to join us.

Background: The FCC opened a new proceeding on “net neutrality” in May 2014 (Docket No. 14-28). This proceeding is in response to a January 2014 ruling by the U.S. Court of Appeals-D.C. Circuit that overturned two of the FCC’s key “net neutrality” rules but affirmed the FCC’s authority under Section 706 of the Telecommunications Act to regulate broadband access to the Internet. The new FCC proceeding will explore what “net neutrality” policies it can and should adopt in the wake of the court’s ruling.

The above organizations support the FCC’s adoption of “net neutrality” policies to ensure that the Internet remains open to free speech, research, education and innovation. We believe that Internet Service Providers (ISPs) should operate their networks in a neutral manner without interfering with the transmission, services, applications, or content of Internet communications. Internet users often assume (and may take for granted) that the Internet is inherently an open and unbiased platform, but there is no law or regulation in effect today that requires ISPs to be neutral. ISPs can act as gatekeepers—they can give enhanced or favorable transmission to some Internet traffic, block access to certain web sites or applications, or otherwise discriminate against certain Internet services for their own commercial reasons, or for any reason at all.

The above organizations are especially concerned that ISPs have financial incentives to provide favorable Internet service to certain commercial Internet companies or customers, thereby disadvantaging nonprofit or public entities such as colleges, universities and libraries. For instance, ISPs could sell faster or prioritized transmission to certain entities (“paid prioritization”), or they could degrade Internet applications that compete with the ISPs’ own services. Libraries and higher education institutions that cannot afford to pay extra fees could be relegated to the “slow lane” on the Internet.

To be clear, the above organizations do not object to paying for higher-capacity connections to the Internet; once connected, however, users should not have to pay additional fees to receive prioritized transmission and their Internet messages or services should not be blocked or degraded. Such discrimination or degradation could jeopardize education, research, learning, and the unimpeded flow of information.

For these reasons, the above organizations believe that the FCC should adopt enforceable policies based on the following principles to protect the openness of the Internet:

Ensure Neutrality on All Public Networks: Neutrality is an essential characteristic of public broadband Internet access. The principles that follow must apply to all broadband providers and Internet Service Providers (ISPs) who provide service to the general public, regardless of underlying transmission technology (e.g., wireline or wireless) and

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IFC report to ALA Council

The following is the text of the ALA Intellectual Freedom Committee's report to the ALA Council, delivered by IFC Chair Doug Archer on July 1 at the ALA Annual Conference in Las Vegas.

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities.

INFORMATION

Lemony Snicket Prize for Noble Librarians Faced with Adversity

The first-ever Lemony Snicket Award for Noble Librarians Faced with Adversity was presented to Laurence Copel, youth outreach librarian and founder of the Lower Ninth Ward Street Library, by author Daniel Handler during the ALA Awards Reception. Handler, also known as Lemony Snicket, presented the citation to Copel, along with a platter designed by Mo Willem.

Fencing Out Knowledge: Impacts of the Children's Internet Protection Act Ten Years Later

The Office for Intellectual Freedom and the Office for Information Technology Policy in announced the publication of "Fencing Out Knowledge: Impacts of the Children's Internet Protection Act 10 Years Later," a report detailing how overfiltering has negatively impacted education and the right to receive information. The report is based on a year-long study that included a two-day symposium during the summer 2013 and other research. It is available online through the ALA website at connect.ala.org/files/cipa_report.pdf.

Speaking About "The Speaker"

The Intellectual Freedom Committee was pleased to cosponsor a program with the Association of American Publishers, Black Caucus of the American Library Association, and Library History Round Table on the 1977 IFC-produced film *The Speaker . . . A Film About Freedom*. The program was two years in the making, and proved to be a powerful, interesting, and provocative hour and a half session.

IFC presented the program in the context of larger issues that ALA continues to deal with: issues of race and diversity in libraries and our communities; encouraging deliberative and respectful dialogue; intellectual freedom and ongoing challenges to speakers, library and school resources and programs, and the presentation of controversial and disfavored ideas. Mark McCallon gave background on the genesis of the film and discussed his research on contemporary responses to it, particularly over 500 surveys filled out by ALA Conference-goers who gave their opinions on the film in Detroit in 1977. Attendees viewed the "60 Minutes" segment about the controversy recorded during

the 1978 Midwinter Meeting in Chicago and aired in April 1978. Beverly Lynch discussed how she uses the film to teach LIS students at UCLA both about ALA's structure and to get them to consider how to approach collection and presentation of difficult ideas. Robert Wedgeworth talked publically for the first time about his perspective about the film as then-Executive Director of ALA.

The discussion that followed—like the discussions following the two screenings of the film earlier in the conference—was thoughtful and valuable. There was a general consensus that discussing all the issues raised around the film and the program was essential.

We encourage all ALA members who are interested in this part of ALA's history to explore the pathfinder created by the ALA Library and available at www.ala.org/tools/speaker. OIF and ALA Library staff will continue to add resources as they come to their attention; if you know of resources that should be included please send them to jokelley@ala.org.

Our thanks to the program cosponsors, speakers, and everyone who has participated in the conversation online and in person.

PROJECTS

Choose Privacy Week

Privacy Week 2014 was held May 1-7, 2014. This year's observance featured a new digital privacy webinar and guest bloggers discussing privacy topics ranging from surveillance to the art of developing library privacy policies. The webinar was presented by North Dakota State Library staff librarian Eric Stroshane, who discussed "Defence Against the Digital Dark Arts," an introduction to key online privacy concepts and strategies designed to help librarians act as better stewards of patrons' privacy as well as their own. Helen Adams and Ann Crewdsen also introduced the new edition of the Privacy Toolkit (<http://www.ala.org/advocacy/privacyconfidentiality/toolkitsprivacy/privacy>).

Banned Books Week

Banned Books Week (BBW) will be held September 21–27, 2014. This year's theme will focus on graphic novels and censorship.

On Saturday, June 28, and Sunday, June 29, SAGE and ALA's Office for Intellectual Freedom hosted a Banned Books Video Readout during ALA's Annual Conference in Las Vegas. Over 200 volunteers read a short passage from their favorite banned book and then spoke from the heart about why that book matters. The videos will be posted to the Banned Books Week YouTube channel during Banned Books Week, September 21–27, 2014.

BBW merchandise—including posters, bookmarks, and t-shirts—are sold and marketed through the ALA Store

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council delivered by FTRF President Julius Jefferson at the ALA Annual Meeting in Las Vegas.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2014 Midwinter Meeting:

LITIGATION

Susan B. Anthony List v. Driehaus: The Freedom to Read Foundation's ability to defend the freedom to read in our libraries and schools and protect the freedom of speech and freedom of the press depends on our ability to challenge unconstitutional laws and regulations before any chilling effect on speech takes hold. On January 10, 2014, the Supreme Court agreed to take up a lawsuit that, if decided against the petitioner, would all but eliminate FTRF's ability to seek judicial relief from unconstitutional laws. That lawsuit, *Susan B. Anthony List v. Driehaus*, challenged a state law regulating speech in campaign advertising. The plaintiff, the Susan B. Anthony List (SBAL) alleged that the statute unconstitutionally chilled its speech after the Ohio Elections Commission said it found probable cause to believe that SBA violated the law via its political ads in opposition to Steve Driehaus, a Congressman running for re-election. Because the candidate dropped his complaint against SBAL after the conclusion of the election, the district court ruled that SBAL lacked standing to file a pre-enforcement challenge because it couldn't demonstrate that prosecution was likely or imminent. The court said, "[w]ithout enforcement action pending at any stage, a case or controversy does not exist." The Sixth Circuit Court of Appeals affirmed the district court's decision, saying neither past threats of enforcement nor a chilling effect on the plaintiff's speech sufficed to prove an "imminent threat of future prosecution" that would allow SBAL to challenge the constitutionality of a statute threatening free speech rights.

Over the past 40 years, the Freedom to Read Foundation has participated in over a dozen "pre-enforcement" constitutional challenges to state statutes that resulted in several statutes being held unconstitutional and others narrowed to comply with the First Amendment. If the standard adopted by the Sixth Circuit had applied, none of those cases could have been brought and many of these unconstitutional statutes would have remained unchallenged, effectively chilling protected speech and diminishing library users' right to read and libraries' right to disseminate all materials contained in their collections.

The importance of allowing challenges to censorship laws before an individual or institution is prosecuted for their speech spurred the Freedom to Read Foundation to join an *amicus curiae* brief urging the United States Supreme Court to reaffirm the principle that persons who have a

well-founded fear of prosecution under a law that infringes First Amendment rights should have standing to bring a "pre-enforcement" challenge to the law, and not face a choice between engaging in self-censorship or risking criminal prosecution. The American Library Association joined the brief, which also was signed by the American Booksellers Association; the American Booksellers Foundation for Free Expression; the Association of American Publishers, Inc.; the Comic Book Legal Defense Fund; and a number of regional bookseller associations and individual bookstores.

I am happy to report that on June 16, 2014, the Supreme Court held unanimously that SBAL indeed had standing to bring the pre-enforcement action and reiterated that "a plaintiff satisfies the injury-in-fact requirement where he alleges 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" In writing its opinion, the Supreme Court relied on previous cases brought by the Freedom to Read Foundation and other organizations on the *amicus curiae* brief to reiterate that a well-founded fear of prosecution suffices for standing purposes in a challenge to a pre-enforcement action. This is an important victory for the Freedom to Read Foundation, the American Library Association, and other organizations and associations that work to preserve the freedom to read. For much more on the case, visit www.mediacoalition.org/sbal-v-driehaus.

Arce v. Huppenthal: We continue to monitor the ongoing progress of this lawsuit filed by teachers and students in the Tucson Unified School District (TUSD) against the Arizona Superintendent of Public Instruction and other state officials that challenges the constitutionality of the Arizona statute prohibiting the use of class materials or books that "encourage the overthrow of the government," "promote resentment toward a race or class of people," are "designed primarily for pupils of a particular ethnic group," or "advocate ethnic solidarity instead of the treatment of pupils as individuals." The plaintiffs sued after TUSD was forced to cease its Mexican-American Studies program and remove books from its classrooms. After the district court upheld the statute, the students appealed to the Ninth Circuit Court of Appeals. Subsequently FTRF, joined by the American Library Association, REFORMA, the Black Caucus of the ALA and Asian/Pacific American Librarians Association, filed an *amicus* brief in support of the students' First Amendment claims.

Briefing continues in the case and we are waiting for the Ninth Circuit to set a date for oral argument. Our brief has been well-received and has been cited by the plaintiffs and other parties to the appeal, and we thank ALA, REFORMA, BCALA, and APALA for their support. I invite you track the progress of the case at www.ftrf.org/?Arce_v_Huppenthal and on Twitter @ftrf.

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FCC releases report showing state-by-state impacts of e-rate proposal to close wi-fi gap in schools and libraries

The Federal Communications Commission released a report July 1 of the potential impact of a pending proposal to modernize the federal E-Rate program to meet a pressing demand by the nation's schools and libraries: robust connectivity to the Internet through Wi-Fi networks.

Three out of five schools in America lack the wireless high-speed Internet—or Wi-Fi—to carry data at today's broadband speeds. The report provides a state-by-state breakdown of the estimated number of additional students, schools and libraries that would gain E-rate funding needed for Wi-Fi upgrades over the next five years under the proposal by FCC Chairman Tom Wheeler. Nationwide, the proposal would increase funding for Wi-Fi 75 percent for rural schools and 60 percent for urban schools, allowing an additional 44 million students and 16,000 libraries to have access to Wi-Fi services by 2019, all within existing program funding.

"Technology has changed. The needs of schools and libraries have changed. The E-Rate program must reflect these changes," said Wheeler. "Modernizing E-Rate to expand Wi-Fi connectivity in schools and libraries will empower students and library patrons to use the latest education technology to access new learning opportunities and infinite worlds of information."

Wi-Fi is the most cost-effective way to connect to the Internet at today's speeds for individualized online learning. Despite this incredible Wi-Fi connectivity gap, the E-rate program was unable to support any Wi-Fi in 2014. When funds have been available for Wi-Fi in prior years, they have only reached about 5% of schools and 1% of libraries. The proposal will help close the Wi-Fi gap by maximizing existing funds, and ensuring funding is available to the vast majority of schools and libraries, not just a few. Reported in: FCC Press Release, July 1. □

privacy groups ask Obama not to renew NSA powers

A coalition of more than two dozen privacy and digital rights groups asked President Obama not to renew a contested National Security Agency program when its legal authority expired in June. In a letter sent on June 17, organizations such as the American Civil Liberties Union, Electronic Frontier Foundation and Electronic Privacy Information Center urged Obama and Attorney General Eric Holder not to seek another court order allowing the agency to collect Americans' phone records.

The contested program is "not effective," "unconstitutional" and "has been misused," they wrote. "It should end."

The NSA needs approval from the Foreign Intelligence Surveillance Court every 90 days in order to continue its collection of records, which track the numbers people call as well as the length and frequency of their conversations but not what they actually talk about.

Obama in January unveiled a series of reforms requiring government agents to get a court order before searching the phone records database and limiting the searches to people two "hops" away from a target. More sweeping reforms, however, require action from Congress.

The House passed a compromise version of a bill to effectively end the NSA program earlier this year, but many privacy groups dropped their support as it hit the floor, worrying that it had been too watered down. The Senate was debating that measure, called the USA Freedom Act, this summer.

The civil liberties advocates said the Obama administration shouldn't wait. "Legislative proposals are pending in Congress. More needs to be done," they wrote in their letter. "But the decision to renew the [program's] authority is solely within the authority of the Department of Justice." Reported in: *The Hill*, June 17. □

European court lets users erase web records

Europe's highest court said May 13 that people had the right to influence what the world could learn about them through online searches, a ruling that rejected long-established notions about the free flow of information on the Internet.

A search engine such as Google should allow online users to be "forgotten" after a certain time by erasing links to web pages unless there are "particular reasons" not to, the European Court of Justice in Luxembourg said.

The decision underlined the power of search companies to retrieve controversial information while simultaneously placing sharp limits on their ability to do so. It raised the possibility that a Google search could become as cheery—and as one-sided—as a Facebook profile or an About.me page.

Jonathan Zittrain, a law and computer science professor at Harvard, said those who were determined to shape their online personas could in essence have veto power over what they wanted people to know.

"This is a good opinion for free expression," said William Echikson, who oversees free speech for Google in Europe. "Some will see this as corrupting," he said. "Others will see it as purifying. I think it's a bad solution to a very real problem, which is that everything is now on our permanent records."

The case began in 2009 when Mario Costeja, a lawyer in Spain, objected that entering his name in Google's search engine led to legal notices that he said were no longer relevant.

In some ways, the court is trying to erase the last 25 years, when people learned to routinely check out online every potential suitor, partner or friend. Under the court's ruling, information would still exist on websites, court documents and online archives of newspapers, but people would not necessarily know it was there. The decision cannot be appealed.

In the United States, the court's ruling would clash with the First Amendment. But the decision heightens a growing uneasiness everywhere over the Internet's ability to persistently define people against their will.

"More and more Internet users want a little of the ephemerality and the forgetfulness of predigital days," said Viktor Mayer-Schönberger, professor of Internet governance at the Oxford Internet Institute.

Young people, in particular, do not want their drunken pictures to follow them for the next 30 years. "If you're always tied to the past, it's difficult to grow, to change," Mayer-Schönberger said. "Do we want to go into a world where we largely undo forgetting?"

The court said search engines were not simply dumb pipes, but played an active role as data "controllers," and must be held accountable for the links they provide. Search engines could be compelled to remove links to certain pages, it said, "even when the publication in itself on those pages is lawful."

The court also said that a search engine "as a general rule" should place the right to privacy over the right of the public to find information.

Left unclarified was exactly what history remains relevant. Should a businessman be able to expunge a link to his bankruptcy a decade ago? Could a would-be politician

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Herbert Krug wins 2014 Freedom to Read Foundation Roll of Honor Award

Freedom to Read Foundation trustee Herbert Krug is the recipient of the 2014 Freedom to Read Foundation (FTRF) Roll of Honor Award.

Krug is a founding member of the Freedom to Read Foundation and has served as trustee for three years, including two terms as treasurer. Prior to that, Krug provided volunteer service to FTRF since its inception in 1969, using his expertise developed over a legendary career in direct marketing to contribute immeasurably to FTRF's successful fundraising and membership development efforts. He is personally among the

most generous donors in FTRF's history.

In 2009, Krug was a key member of FTRF's 40th Anniversary Gala committee, which raised tens of thousands of dollars for the Foundation; he currently is helping to coordinate FTRF's 45th anniversary celebrations this year. Krug also spearheaded the creation of FTRF's Judith F. Krug Memorial Fund, created in honor of his late wife, FTRF's founding executive director, after her 2009 death. Among his efforts for the Krug Fund has been coordinating the annual selection of grants for Banned Books Week Read-Outs and other events, continuing Judith's substantial legacy in honor of the freedom to read.

"Herb's service to the Freedom to Read Foundation has been remarkable," said Judith Platt, chair of the Roll of Honor Committee. "His commitment to the Foundation's mission and his diligence and generosity in supporting that mission have contributed substantially to FTRF's success. So much of Herb's work has been done quietly and without fanfare that we're delighted to now turn the spotlight on him and to honor him with this award." The Roll of Honor Award was presented on June 27, during the Opening General Session of the 2014 ALA Annual Conference in Las Vegas.

The Roll of Honor was established in 1987 to recognize and honor those individuals who have contributed substantially to FTRF through adherence to its principles and/or substantial monetary support. Reported in ALA news release, □

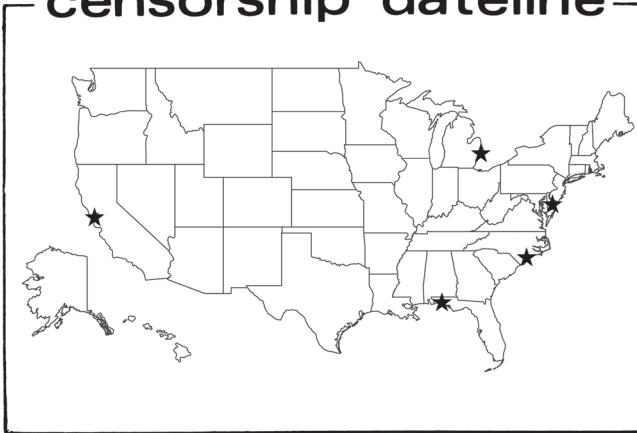
2014 edition of *Banned Books: Challenging our Freedom to Read* now available

Banned Books: Challenging Our Freedom to Read is an essential reference for all who read, write, and work with books. The updated and expanded 2014 edition, now available at the ALA Store Online, features a new, streamlined design that will make this an essential reference you'll return to time and again.

Librarians, educators, students, and parents along with publishers, booksellers, writers, and readers interested in the current state of literary censorship in America—especially in our libraries and schools—will find this volume indispensable. This new edition of *Banned Books* by noted First Amendment advocate Robert P. Doyle details incidents of book bannings from 387 BC to 2014.

Banned Books: Challenging Our Freedom to Read provides a framework for understanding censorship and the protections guaranteed to us through the First Amendment. Interpretations of the uniquely American notion of freedom of expression—and our freedom to read what we choose—are supplemented by straightforward, easily accessible information that will inspire further exploration. □

— censorship dateline



libraries

Grosse Pointe, Michigan

The Grosse Pointe Library Board voted 7-0 on June 26 to stack the *Metro Times* out of sight. Some complained that the advertisements promoted human trafficking.

“We’re taking this out of the vestibules and we’ll have it behind the counter from now on,” library board president Brian Garves said.

Metro Times Editor-in-Chief Valerie Vande Panne said the library board’s decision is hypocritical because books with risque passages, profanity and hate speech sit openly on library shelves. She said complaints about sex trafficking should be taken to police, not to librarians or local City Council members.

At a recent meeting of the Grosse Pointe Park City Council, officials shunned a request to ban the newspaper, insisting that constitutional freedom-of-speech guarantees would trigger a lawsuit if the city tried to ban such a widely accepted publication.

Library patrons will have to ask for copies of *Metro Times* and distribution will be “at the discretion of the librarian,” according to the resolution. It was reported that only people 18 and older or accompanied by an adult are likely to get one. The libraries in Grosse Pointe Park, Grosse Pointe Farms and Grosse Pointe Woods serve residents of the five Grosse Pointe communities.

Andrea LaVigne, 49, of Grosse Pointe Park called the ads “portals” for illegal activity, noting they feature photos of men stripped to the waist and women in lingerie, as well as invitations for services. “It’s not just raunchy images,” LaVigne said. Reported in: *Grand Haven Tribune*, July 1.

schools

Fremont, California

A health textbook that talks about masturbation, foreplay and erotic touch, among other sexual education topics, will stay, even though some parents are objecting to it on the grounds it’s inappropriate for their ninth grade children. Some of those parents have threatened a lawsuit if the book is not removed.

The school board voted 3-2 on June 25 to purchase copies of *Your Health Today* for \$204,600 after an extensive review process that included input from teachers and parents, said school board President Lara Calvert-York. It was chosen over six other books under consideration and the district has no plans to pull it from classrooms, she said.

But that approval process the book went through hasn’t dulled the fury of parents who say the book’s information on sex is way too advanced. A petition on the website Care2 has over 1,500 online signatures calling for the book’s removal.

“There’s a section that tells you how to talk to your prospective partners about your sexual history,” said Asfia Ahmed, a parent and school district employee who said she may sue the district if it does not remove the book. “How does that relate to a 14-year-old kid? I don’t see it at all.”

Ahmed said the district is violating state education law mandating that instructional material be age appropriate, although she acknowledged the term age appropriate is open to interpretation. Ahmed said she believes Fremont is “culturally a very conservative place” and that could account for a lot of the uproar over the book. “But I am a very liberal person, and, in spite of that, I still find the book shocking,” Ahmed said.

Calvert-York said Fremont needs to teach its kids about sex because, like it or not, many students already are sexually active in ninth grade. “We know this from student surveys done in our own district,” Calvert-York said. “Ninth grade is the last time when we have an opportunity to help educate our students on how to be physically and emotionally safe.”

Fremont parent Becky Bruno said she almost signed the petition asking the district to ban the book after getting emails from other parents before she had a look at it. But after she saw the book, she changed her mind.

“I was expecting to see explicit pictures, expecting controversial information, and I didn’t find that in the book,” Bruno said. “Yes, there is a section on sexual health, but the pictures are drawings of anatomy and would be the same thing they were exposed to in elementary and middle school. I didn’t see anything that would be categorized as pornography, and that’s what some of the parents are saying.”

Teri Topham, whose daughter is going into ninth grade in Fremont and who teaches high school at a Fremont charter school, said she would throw the book out.

“I flipped through it and saw sections that mentioned bondage with ropes and handcuffs,” Topham said. “Not only does it have material that is too explicit and inappropriate, it doesn’t meet their need for their ages. I am astounded the health teachers and school board said, ‘yes, this is the best book we could find.’” Reported in: *Oakland Tribune*, August 11.

Lewes, Delaware

Citing language deemed inappropriate for entering high school freshmen, Cape Henlopen school board has removed *The Miseducation of Cameron Post* from the district’s summer reading list. The book was part of a ten-book list given to district middle school students entering high school in the fall and taking college prep and honors classes. The list, called the Blue Hen List, is a collection of books deemed age-appropriate by state librarians from across the state.

The board voted 6-1 in favor of removing the book from the list during its June 12 meeting. The issue was raised after parents examined the reading list and brought concerns to the board.

Cape Henlopen school board President Spencer Brittingham said after some research he came to the conclusion that the book was not appropriate for the targeted age group. The incoming freshmen are the most impressionable group at the high school, he said.

“It’s for a more mature level of student. A sophomore or junior,” said Brittingham. Brittingham said no parent would want children of that age, 13 to 14, to be walking around the house using the language used in the book. He said he hadn’t read the book, but in passages found online the F-word was used four or five times, and that didn’t sit well.

“I knew in less than three minutes that this wasn’t a book I wanted on the list,” he said.

Written by Emily M. Danforth, the book is set in rural Montana in the early 1990s. The parents of the main character, a teenage girl named Cameron Post, die in a car accident before finding out she’s gay. Orphaned, the girl moves in with her old-fashioned grandmother and ultraconservative aunt Ruth; she falls in love with her best friend—a girl.

When Post is eventually outed, her aunt sends her to God’s Promise, a religious conversion camp the aunt believes will cure her homosexuality. At the camp, she comes face to face with the cost of denying her identity.

According to an Amazon.com review, “The book is a powerful and widely acclaimed YA [young adult] coming-of-age novel in the tradition of the classic, *Annie on My Mind*.” The book was a 2013 finalist for the William C. Morris Young Adult Debut Award, which honors a book by a first-time author writing for teens and celebrating impressive new voices in young adult literature.

The book also made the 2013 Best Fiction for Young Adults list put out by the Young Adult Library Services Association. According to the association’s website “the

books, recommended for ages 12-18, meet the criteria of both good quality literature and appealing reading for teens.”

The summer assignment calls for college prep students to choose one book and honors students two books from the list, find an article in the news that makes a connection to the story and then write an essay linking the two. The task accounts for 10 percent of the first marking period grade.

Margie Cyr, Dover Public Library director and Delaware Library Association’s (DLA’s) Intellectual Freedom Committee chair, said the DLA is discouraged the book has been removed from the list. There were other choices; that book was simply one of the options, she said.

Cyr said the DLA encourages parents to participate, and it is appropriate for them to do so, but family choices are based on family values, and it is not appropriate for one family’s values to dictate what’s on the list and what isn’t. “It’s a concern when other people dictate what should and should not be read,” she said.

Cyr said the Blue Hen List is compiled of popular children’s literature that’s designed to encourage kids to read through the summer to maintain their skill level.

Board member Sandi Minard said language is the sole reason she voted in favor of removing the book from the list. She said she sat down with the parents who brought the issue to light and went over the parts of the book that were concerning.

Minard, who read passages from the book, but not the whole thing, said the book is full of the F-word. There are pages and pages, she said, of the F-word being used. “It’s all throughout the book,” she said. “We’re asking students to refrain from that language when they’re in school, but there it is, right in front of them. That word is just offensive to a lot of people.”

Board Vice President Roni Posner was the lone vote to keep the book on the list. She said she didn’t believe she had enough 21st century curriculum knowledge to judge what should or shouldn’t be on a reading list created by the state’s school librarians.

Brittingham and Minard made clear that the book was not banned from the high school’s library shelves, but they didn’t think having it on a summer reading list endorsed by the district was a good idea. Brittingham said the intent is not to censor, but it’s the school board’s job to remain informed of the district’s programs and to make decisions in the best interest of the students when issues garner their attention. In this case, he said, the board didn’t feel it was a good idea to have the book on a list that it was indirectly supporting.

“The board gets the blame for all the good and the bad, mainly the bad, no matter what happens,” he said.

Cyr said she was aware of some parent concern over the book being on the list, but she was surprised to hear the school board took action. A lot of the time, said Cyr, when an action like this is taken, it blows up in a board’s face.

“Now, I’m reading it, and I imagine a lot of people are going to be reading it to see what the issue is all about,” she said. Reported in: capegazette.com, June 30.

Pensacola, Florida

The principal of a Pensacola-based high school has cancelled its One School/One Book summer reading program, citing concerns that the approved reading assignment promoted hacker culture. Students were going to read Cory Doctorow’s bestselling young adult novel *Little Brother*, but the school pulled the book after receiving complaints from parents.

The principal cited reviews that emphasized the book’s positive view of questioning authority, lauding “hacker culture,” and discussing sex and sexuality in passing. He mentioned that a parent had complained about profanity (there’s no profanity in the book, though there’s a reference to a swear word). In short, he made it clear that the book was being challenged because of its politics and its content.

In response Doctorow and his publisher sent 200 complimentary copies of the book directly to students at the school. Reported in: mediabistro.com, June 11.

Wilmington, North Carolina

A Brunswick County woman isn’t backing down from her efforts to remove a controversial young adult novel from one school’s classrooms.

Ash resident Frances Wood has appealed a decision by a team of parents and educators to keep Sherman Alexie’s *The Absolutely True Diary of a Part-Time Indian* at Cedar Grove Middle School.

Wood filed her original complaint with the district late in June, claiming the book contains numerous depictions of sexual behavior, as well as instances of racism, vulgar language, bullying and violence. Attached to her complaint was a petition signed by 42 members of her church, Soldier Bay Baptist.

In email exchanges released by the school district, Wood argues that Cedar Grove principal Rhonda Benton, a fellow church member, has the authority to remove a book from her school but has opted not to because of a perceived conflict of interest.

“I think the principal at Cedar Grove, simply because she is a believer and a member of the Christian church, when asked, she should have made the decision to remove this book from school because of its filthy content,” Wood wrote to Superintendent Dr. Edward Pruden in response to the committee’s unanimous vote to allow the book to remain part of the curriculum. “In this area, which is dominated by Christian churches, I think she would be criticized more for keeping it in her school than she would be for taking it out.”

District policy 3210 does state that the “principal or a committee...” can ultimately respond to a book challenge.

But school district spokeswoman Jessica Swencki said Benton chose in this instance to follow the outlined process of committee review.

The Absolutely True Diary of a Part-Time Indian tells the story of a poverty-stricken Native American boy and aspiring artist who struggles with his identity after leaving the reservation to attend an all-white school. Since its publication in 2007, the book has received acclaim—including numerous national literary awards—but has also been at the center of controversy in school districts across the country.

It has been banned in school systems in Missouri, Washington, Wyoming and Idaho for sexually explicit passages and graphic language. A group of parents in Chicago also tried, unsuccessfully, to have the book pulled out of classes in 2009.

Wood argues in her complaint that there are no positive qualities to the book and said she would not recommend it to any age group.

Cedar Grove’s review committee disagreed on July 15, arguing the value of “the realistic depiction of bullying and racism, as well as a need for tolerance and awareness of cultural differences.”

“It’s time we call a spade a spade and a filthy book a filthy book, no matter whose toes we have to step on,” Wood wrote to Pruden. “And we need to quit being politically correct when someone does something we know is in direct conflict with the Bible. We need to stand up and shout. I know I don’t want to take the consequences of God’s wrath.”

In an email sent to Benton before an official book challenge was made, Wood said she was led by God to have the book removed from Cedar Grove, and would send her correspondence “all over the county” if Benton did not decide, as principal, to take it off the shelves. She calls the novel “sin, pure sin.”

Pruden will now review the appeal and make his determination. While procedures do not specify a designated response time, Swencki said Pruden will review the appeal and issue a response within the next few weeks.

The superintendent’s decision may then be appealed to the Brunswick County Board of Education, a move Wood has already said, via email, she will take if Pruden upholds the school committee’s vote.

Wood has said she is not the parent or grandparent of a child at Cedar Grove. District policy states that parents or guardians who do not approve of school reading materials may request alternative texts. Reported in: *Port City Daily*, July 18.

foreign

Singapore

Authorities in Singapore, where gay sex is illegal, have withdrawn three children’s books about gay couples from

libraries. In a statement, the National Library Board (NLB) suggested that gayness and family values are incompatible: “Young children are among our libraries’ most frequent visitors. Many of them browse books in our children’s sections on their own. As such, NLB takes a pro-family and cautious approach in identifying titles for our young visitors.”

The two books are *And Tango Makes Three*, inspired by two real male penguins who hatched an egg together; *The White Swan Express: A Story About Adoption*, about four couples—one of which is a lesbian couple—who travel to China to adopt baby girls; and *Who’s in Our Family*. The

books will be pulped.

The ban was reportedly spurred by a complaint from a single library user who is also a member of the Facebook group “We Are Against Pinkdot in Singapore.” The NLB boasts a collection of more than five million books and audio-visual materials, and a spokesperson said that it acts on less than a third of the twenty or so removal requests received each year. (James Patterson’s *Kill Me If You Can*, which depicts incest, was the subject of a complaint but remains on the shelves.) Reported in: npr.org, July 11; mediabistro.com, July 14. □

from the bench



U.S. Supreme Court

In a 9-0 opinion authored by Justice Clarence Thomas, the Supreme Court decided June 16 that a would-be speaker can bring a First Amendment claim against a statute penalizing speech without having to wait to suffer the punishment.

The Court's unanimous opinion overturned a decision from the Cincinnati-based U.S. Court of Appeals for the Sixth Circuit, which departed from First Amendment precedent in ruling that a speaker could challenge a restraint on speech only by incurring the punishment or proving that punishment was imminent.

It's enough, the Supreme Court decided, that a speaker can show he or she plans to engage in "arguably" protected speech but faces a "credible threat of enforcement."

The case arose from an anti-abortion political group's attempt to disseminate an attack ad against a Democratic Ohio congressman. The congressman, Steve Driehaus, filed a complaint with the Ohio Elections Commission under an unusual state law criminalizing false statements in a campaign ad. The complaint never went anywhere because Driehaus lost his race, but the Susan B. Anthony Fund sought to continue challenging the Ohio law on the grounds that fear of criminal punishment would inhibit its advertising in future races.

The Supreme Court ruling reinstated the SBA Fund's First Amendment challenge, meaning that the merits of the Ohio statute will be back before the federal courts before long. The case is *Susan B. Anthony List v. Driehaus*. For more on this decision see "FTRF report to ALA Council" on page 114. Reported in: splc.org, June 16.

In a sweeping victory for privacy rights in the digital age, the Supreme Court on June 25 unanimously ruled that the police need warrants to search the cellphones of people they arrest. While the decision will offer protection to the 12 million people arrested every year, many for minor crimes, its impact will most likely be much broader. The ruling almost certainly also applies to searches of tablet and laptop computers, and its reasoning may apply to searches of homes and businesses and of information held by third parties such as phone companies.

"This is a bold opinion," said Orin S. Kerr, a law professor at George Washington University. "It is the first computer-search case, and it says we are in a new digital age. You can't apply the old rules anymore."

Chief Justice John G. Roberts Jr., writing for the court, was keenly alert to the central role that cellphones play in contemporary life. They are, he said, "such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."

But he added that old principles required that their contents be protected from routine searches. One of the driving forces behind the American Revolution, Chief Justice Roberts wrote, was revulsion against "general warrants," which "allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity."

"The fact that technology now allows an individual to carry such information in his hand," the chief justice also wrote, "does not make the information any less worthy of the protection for which the founders fought."

The government has been on a surprising losing streak in cases involving the use of new technologies by the police. In this case and in a 2012 decision concerning GPS devices, the Supreme Court's precedents had supported the government. "But the government got zero votes in those two cases," Professor Kerr said.

The courts have long allowed warrantless searches in connection with arrests, saying they are justified by the need to protect police officers and to prevent the destruction of evidence. But Chief Justice Roberts said neither justification made much sense in the context of cellphones. While the police may examine a cellphone to see if it contains, say, a razor blade, he wrote, "once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one."

The possibility that evidence could be destroyed or hidden by "remote wiping" or encryption programs, Chief Justice Roberts wrote, was remote, speculative and capable of being addressed. The police may turn off a phone, remove its battery or place it in a bag made of aluminum foil.

Should the police confront an authentic "now or never" situation, the chief justice wrote, they may well be entitled to search the phone under a separate strand of Fourth Amendment law, one concerning "exigent circumstances."

On the other side of the balance, Chief Justice Roberts

said, is the data contained on typical cellphones. Ninety percent of Americans have them, he wrote, and they contain “a digital record of nearly every aspect of their lives—from the mundane to the intimate.”

He wrote, “According to one poll, nearly three-quarters of smartphone users report being within five feet of their phones most of the time, with 12 percent admitting that they even use their phones in the shower.”

Even the word cellphone is a misnomer, he said. “They could just as easily be called cameras, video players, Rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps or newspapers,” he wrote.

Chief Justice Roberts acknowledged that the decision would make law enforcement more difficult. “Cellphones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals,” he wrote. “Privacy comes at a cost.”

But other technologies, he said, can make it easier for the police to obtain warrants. Using email and iPads, the chief justice wrote, officers can sometimes have a warrant in hand in fifteen minutes.

Ellen Canale, a spokeswoman for the Justice Department, said the department would work with its law enforcement agencies to ensure full compliance with the decision.

The Supreme Court is occasionally criticized for its lack of technological savvy, but Chief Justice Roberts, 59, seemed fully familiar with what smartphones can do. “The average smartphone user has installed 33 apps,” he wrote, “which together can form a revealing montage of the user’s life.”

There are mobile applications, he said, for “Democratic Party news and Republican Party news,” for “alcohol, drug and gambling addictions,” for “sharing prayer requests” and for “tracking pregnancy symptoms.” Records from those applications, he added, “may be accessible on the phone indefinitely.” And yet more information, he said, may be available through cloud computing.

“An Internet search and browsing history,” he wrote, “can be found on an Internet-enabled phone and could reveal an individual’s private interests or concerns—perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD. Data on a cellphone can also reveal where a person has been. Historic location information is a standard feature on many smartphones and can reconstruct someone’s specific movements down to the minute, not only around town but also within a particular building.”

The court heard arguments in April in two cases on the issue, but issued a single decision. The first case, *Riley v. California*, arose from the arrest of David L. Riley, who was pulled over in San Diego in 2009 for having an expired auto registration. The police found loaded guns in his car and, on inspecting his smartphone, entries they associated with a street gang.

A more comprehensive search of the phone led to information that linked Riley to a shooting. He was later convicted of attempted murder and sentenced to fifteen years to life in prison. A California appeals court said neither search had required a warrant.

The second case, *United States v. Wurie*, involved a search of the call log of the flip phone of Brima Wurie, who was arrested in 2007 in Boston and charged with gun and drug crimes. Last year, the federal appeals court in Boston threw out the evidence found on Wurie’s phone.

News organizations filed a brief supporting Riley and Wurie in which they argued that cellphone searches can compromise news gathering.

The Justice Department, in its Supreme Court briefs, said cellphones were not materially different from wallets, purses and address books. Chief Justice Roberts disagreed. “That is like saying a ride on horseback is materially indistinguishable from a flight to the moon,” he wrote.

Jeffrey L. Fisher, a lawyer for Riley, said the decision was a landmark. “The decision brings the Fourth Amendment into the 21st century,” he said. “The core of the decision is that digital information is different. It triggers privacy concerns far more profound than ordinary physical objects.”

The Supreme Court’s decisions can be technical. This one was straightforward. What must the police do when they want to search a cellphone in connection with an arrest? “Get a warrant,” Chief Justice Roberts wrote.

In response to the decision, Emily Sheketoff, executive director of the American Library Association’s (ALA) Washington Office, released the following statement:

“In the past few years, our cell phones have become mobile libraries capable of storing massive amounts of personal and private data about our lives. The Constitution does not give law enforcement the right to conduct unlawful searches of our cell phones—many of which contain immensely personal information, such as our private conversations, photos, videos, banking information and website history. In the same manner that we would not allow police officers to search unlawfully through our home library bookshelves without a warrant, we cannot allow government officials to search freely through our cell phones.

“We applaud the Supreme Court’s decision to uphold basic privacy principles granted by the Fourth Amendment. As we work to advocate for increased privacy protections from our government, we are encouraged that the U.S. Supreme Court would rule in favor of protecting the nation’s constitutional checks and balances.”

In March, the American Library Association, along with the Internet Archive, filed a “friend of the court” brief in the two cases, examining the constitutionality of cell phone searches after police arrests. In the *amicus* brief, both nonprofit organizations argued that warrantless cell phone searches violate privacy principles protected by the Fourth Amendment. Reported in: *New York Times*, June 25.

In a case with far-reaching implications for the entertainment and technology business, the U.S. Supreme Court ruled June 25 that Aereo, a television streaming service, had violated copyright laws by capturing broadcast signals on miniature antennas and delivering them to subscribers for a fee.

The 6-3 decision handed a major victory to the broadcast networks, which argued that Aereo's business model was no more than a high-tech approach for stealing their content.

The justices' ruling leaves the current broadcast model intact while imperiling Aereo's viability as a business, just two years after a team of engineers, lawyers, marketers and even an Olympic medalist came together with a vision to provide a new viewing service that "enables choice and freedom."

Broadcasters applauded the ruling, and shares in the media groups shot up. "For two years they have been in existence, trying to hurt our business," Leslie Moonves, chief executive of CBS, said. "They fought the good fight. They lost. Time to move on."

Chet Kanojia, Aereo's founder and chief executive, said in a statement that the ruling was a "massive setback" for consumers and "sends a chilling message to the technology industry."

Aereo had previously said it had "no Plan B" if it lost in court. After the ruling, Kanojia said that "our work is not done" and that Aereo would continue to "fight to create innovative technologies," but he did not specifically say how the company would move forward. Analysts and legal experts said Aereo was left with few options in an opinion that rejected all of its major arguments.

The Supreme Court case was closely watched by the media and technology industries. Oral arguments in April attracted a who's who of executives. It comes as broadcasters navigate the vast technological changes and rapid shifts in viewer habits, including a rising tide of viewers who are canceling traditional pay-television subscriptions in favor of cheaper streaming alternatives.

In arguments before the court in April, the broadcasters contended that Aereo and similar services threatened to cut into a vital revenue stream—the billions of dollars they receive from cable and satellite companies in so-called retransmission fees, or money paid to networks for the right to retransmit their programming. The networks said they would have considered removing their signals from the airwaves if the court ruled for Aereo.

Aereo said that the service it provided through local warehouses of small antennas was merely helping its subscribers do what they could lawfully do since the era of rabbit ears: watch free broadcast television delivered over public airwaves.

Justice Stephen G. Breyer, writing for the majority, said the service was "not simply an equipment provider," but acted like a cable system in that it transmitted copyrighted content. "Insofar as there are differences," he wrote, "those

differences concern not the nature of the service that Aereo provides so much as the technological manner in which it provides the service."

At the hearing in April, the justices had expressed concern that a ruling against Aereo would stifle technological innovation—a concern echoed throughout the tech industry. Justice Breyer took pains to say the decision was limited to Aereo's service. "We believe that resolution of questions about cloud computing, remote storage DVRs and other novel matters not now before us should await a case in which they are clearly presented," he said in announcing the decision from the bench.

Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan joined Breyer's majority opinion.

In a dissent that expressed distaste for Aereo's business model, Justice Antonin Scalia said that the service had nevertheless identified a loophole in the law. "It is not the role of this court to identify and plug loopholes," he wrote. "It is the role of good lawyers to identify and exploit them, and the role of Congress to eliminate them if it wishes."

Justices Clarence Thomas and Samuel A. Alito Jr. joined the dissent.

Kanojia said that Aereo had worked to create a technology that complied with the law. "Today's decision clearly states that how the technology works does not matter," he said.

Subscribers to Aereo paid \$8 to \$12 a month to rent one of the start-up's dime-size antennas that captured over-the-air television signals. Users then could watch near-live TV and record programs on major broadcast networks such as ABC, CBS, NBC and Fox. In combination with other Internet services like Netflix and Hulu, it could provide much of a viewer's television diet at a fraction of the cost of a cable or satellite television bill.

Though Aereo itself was a small service with fewer than 500,000 subscribers, the broadcast networks worried that cable and satellite companies would adopt similar technology in an effort to avoid paying retransmission fees, which according to SNL Kagan, a media research firm, total more than \$4.3 billion annually.

It was unclear how soon the ruling will affect subscribers to Aereo, which is operating in about a dozen metropolitan areas in the United States. Aereo has raised a total of \$97 million in funding since Kanojia founded it. Analysts and legal experts said that Aereo could change its business model and pay broadcasters for the right to distribute their programming, but noted that such an outcome was unlikely.

Moonves of CBS said that he would welcome a discussion with Aereo about a deal to distribute CBS programming if the start-up was prepared to pay. "We would talk to anybody," Moonves said.

The case, *ABC Inc. v. Aereo*, turned on a part of the copyright law that requires the permission of copyright owners for "public performances" of their work. The law

defines such performances to include retransmission to the public.

Aereo had argued that its transmissions were private performances because it assigned an individual antenna to every viewer, but Justice Breyer rejected that argument as well. “You can transmit a message to your friends whether you send identical emails to each friend or a single email all at once,” he said.

The case was sent back to the lower courts. Last year, a divided three-judge panel of the United States Court of Appeals for the Second Circuit in New York ruled for Aereo. In January, both sides agreed to bring the case to the Supreme Court to settle the two years of legal sparring. Reported in: *New York Times*, June 25.

The Supreme Court has struck down a Massachusetts law mandating a 35-foot buffer zone around clinics that provide abortion services. Backers of the legislation have said the law treats groups equally, requiring both supporters and opponents of abortion rights to maintain their distance from the clinics. But in a unanimous ruling June 26, the justices found that the buffer zone infringes on the First Amendment rights of protesters.

“The upshot of today’s ruling is that an abortion clinic buffer zone is presumptively unconstitutional. Instead, a state has to more narrowly target clinic obstructions. For example, the police can tell protesters to move aside to let a woman through to the clinic. But it cannot prohibit protesters from being on the sidewalks in the first instance,” wrote one commentator on SCOTUS Blog. “The Court’s opinion in *McCullen v. Coakley* also suggests alternatives for helping clinics protect their patients and staff from harassment, including obtaining court orders.”

When the Massachusetts case was argued before the justices back in January, it was noted that buffer zones have become common since a Supreme Court ruling 14 years ago that upheld 8-foot buffer zones that move with individuals as they walk into clinics. In Massachusetts, two people were shot and killed and five others were wounded at abortion clinics in 1994. After first trying a moving, ‘no approach’ buffer zone, the state in 2007 adopted a fixed, stationary 35-foot buffer zone outside clinics.

The case pitted plaintiffs led by Eleanor McCullen against Massachusetts and its attorney general, Martha Coakley. The Supreme Court ruling against the law came after the petitioners in the case were dealt losses in both a district court and the court of appeals.

While the justices were unanimous, they were split in their reasoning—with Chief Justice John Roberts writing one opinion, Justice Antonin Scalia writing another (joined by Justices Anthony Kennedy and Clarence Thomas), and Judge Samuel Alito penning a third.

Roberts wrote that because the law regulates public sidewalks that have special speech protections as places for discussion and debate, it also restricts access to a public forum.

With its buffer zone law, Massachusetts took “the extreme step of closing a substantial portion of a traditional public forum to all speakers,” Roberts wrote in his opinion. “Even though the Act is content neutral, it still must be ‘narrowly tailored to serve a significant governmental interest,’” Roberts wrote, citing a precedent.

He later added, “The buffer zones burden substantially more speech than necessary to achieve the Commonwealth’s asserted interests.”

Roberts said that as an alternative approach, Massachusetts could consider an ordinance such as one adopted in New York City that “makes it a crime ‘to follow and harass another person within 15 feet of the premises of a reproductive health care facility.’”

The state could also adopt a law that makes it illegal to attempt to injure, intimidate or interfere with anyone because they’re either coming from or heading toward a health clinic, he said. Reported in: *npr.org*, June 26.

The Supreme Court ruled June 30 that requiring family-owned corporations to pay for insurance coverage for contraception under the Affordable Care Act violated a federal law protecting religious freedom. It was, a dissent said, “a decision of startling breadth.”

The 5-to-4 ruling, which applied to two companies owned by Christian families, opened the door to many challenges from corporations over laws that they claim violate their religious liberty.

The decision, issued on the last day of the term, reflected what appears to be a key characteristic of the court under Chief Justice John G. Roberts Jr.—an inclination toward nominally incremental rulings with vast potential for great change.

Justice Samuel A. Alito Jr., writing for the majority, emphasized the ruling’s limited scope. For starters, he said, the court ruled only that a federal religious-freedom law applied to “closely held” for-profit corporations run on religious principles. Even those corporations, he said, were unlikely to prevail if they objected to complying with other laws on religious grounds.

But Justice Ruth Bader Ginsburg’s dissent sounded an alarm. She attacked the majority opinion as a radical overhaul of corporate rights, one she said could apply to all corporations and to countless laws.

The contraceptive coverage requirement was challenged by two corporations whose owners say they try to run their businesses on Christian principles: Hobby Lobby, a chain of craft stores, and Conestoga Wood Specialties, which makes wood cabinets. The requirement has also been challenged in 50 other cases, according to the Becket Fund for Religious Liberty, which represented Hobby Lobby.

Justice Alito said the requirement that the two companies provide contraception coverage imposed a substantial burden on their religious liberty. Hobby Lobby, he said, could face annual fines of \$475 million if it failed to comply.

Justice Alito said he accepted for the sake of argument

that the government had a compelling interest in making sure women have access to contraception. But he said there were ways of doing that without violating the companies' religious rights.

The government could pay for the coverage, he said. Or it could employ the accommodation already in use for certain nonprofit religious organizations, one requiring insurance companies to provide the coverage. The majority did not go so far as to endorse the accommodation.

Chief Justice Roberts and Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas joined the majority opinion. Justice Ginsburg, joined on this point by Justice Sonia Sotomayor, said the court had for the first time extended religious-freedom protections to "the commercial, profit-making world."

"The court's expansive notion of corporate personhood," Justice Ginsburg wrote, "invites for-profit entities to seek religion-based exemptions from regulations they deem offensive to their faiths."

She added that the contraception coverage requirement was vital to women's health and reproductive freedom. Justices Stephen G. Breyer and Elena Kagan joined almost all of her dissent, but they said there was no need to take a position on whether corporations may bring claims under the religious liberty law.

The two sides differed on the sweep of the ruling.

"Although the court attempts to cabin its language to closely held corporations," Justice Ginsburg wrote, "its logic extends to corporations of any size, public or private." She added that corporations could now object to "health coverage of vaccines, or paying the minimum wage, or according women equal pay for substantially similar work."

But Justice Alito said that "it seems unlikely" that publicly held "corporate giants" would make religious liberty claims. He added that he did not expect to see "a flood of religious objections regarding a wide variety of medical procedures and drugs, such as vaccinations and blood transfusions." Racial discrimination, he said, could not "be cloaked as religious practice to escape legal sanction."

Justice Alito did not mention laws barring discrimination based on sexual orientation. Justice Ginsburg said all sorts of antidiscrimination laws may be at risk.

Josh Earnest, the White House press secretary, said that the court's decision "jeopardizes the health of women employed by these companies" and added that "women should make personal health care decisions for themselves, rather than their bosses deciding for them." Mr. Earnest urged Congress to find ways to make all contraceptives available to the companies affected.

Lori Windham, a lawyer for Hobby Lobby, said, "The Supreme Court recognized that Americans do not lose their religious freedom when they run a family business."

The health care law and related regulations require many employers to provide female workers with comprehensive insurance coverage for a variety of methods of

contraception. The companies objected to covering intra-uterine devices and so-called morning-after pills, saying they were akin to abortion. Many scientists disagree.

"No one has disputed the sincerity of their religious beliefs," Justice Alito wrote. The dissenters agreed.

The companies said they had no objection to some forms of contraception, including condoms, diaphragms, sponges, several kinds of birth control pills and sterilization surgery. Justice Ginsburg wrote that other companies may object to all contraception, and that the ruling would seem to allow them to opt out of any contraception coverage.

A federal judge has estimated that a third of Americans are not subject to the requirement that their employers provide coverage for contraceptives. Small employers need not offer health coverage at all; religious employers like churches are exempt; religiously affiliated groups may claim an exemption; and some insurance plans that had not previously offered the coverage are grandfathered in.

In its briefs in the two cases, *Burwell v. Hobby Lobby Stores*, and *Conestoga Wood Specialties v. Burwell*, the administration said that for-profit corporations like Hobby Lobby and Conestoga Wood must comply with the law or face fines.

The companies challenged the coverage requirement under the Religious Freedom Restoration Act of 1993.

Some scholars said the companies would be better off financially if they dropped insurance coverage entirely, and so could not be said to face a substantial burden on their religious freedom. But Justice Alito said the companies also had religious reasons for providing general health insurance. He added that dropping it could place the companies at "a competitive disadvantage."

The administration argued that requiring insurance plans to include comprehensive coverage for contraception promotes public health and ensures that "women have equal access to health care services." The government's briefs added that doctors, rather than employers, should decide which form of contraception is best.

A supporting brief from the Guttmacher Institute, a research and policy group, said that many women cannot afford the most effective means of birth control and that the coverage requirement would reduce unintended pregnancies and abortions. Justice Ginsburg cited the brief in her dissent.

The decision's acknowledgment of corporations' religious liberty rights was reminiscent of *Citizens United v. Federal Election Commission*, a 2010 ruling that affirmed the free speech rights of corporations. Justice Alito explained why corporations should sometimes be regarded as persons. "A corporation is simply a form of organization used by human beings to achieve desired ends," he wrote. "When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people."

Justice Ginsburg said the commercial nature of for-profit

corporations made a difference. “The court forgets that religious organizations exist to serve a community of believers,” she wrote. “For-profit corporations do not fit that bill.” Reported in: *New York Times*, June 30.

Google must face a class action lawsuit alleging the Internet giant violated federal wiretap law when its Street View vehicles collected data from private Wi-Fi networks. The U.S. Supreme Court said June 30 that it would not consider Google’s challenge to the class action lawsuit.

The federal Wiretap Act bans the interception of electronic communications. Google had argued that it was not illegal to collect radio communications or any “form of electronic communication readily accessible to the general public.”

But a San Francisco federal judge and the U.S. Court of Appeals for the Ninth Circuit did not agree and refused to dismiss the class action.

The class action was filed on behalf of individuals whose information was collected from unsecured Wi-Fi networks when Google’s Street View cars rode past unsuspecting households. The practice came to light after a German data protection commissioner discovered it in 2010. Google publicly apologized for “mistakenly” collecting personal data that was being sent and received on private Wi-Fi networks from 2008 to 2010. Such data can include passwords and other sensitive information transmitted over the Internet.

The Electronic Privacy Information Center filed *amicus* briefs in the case. “The Ninth Circuit decision affirmed privacy rights for individual Wi-Fi users,” said Marc Rotenberg, executive director of the privacy watchdog group. “The court’s decision leaves in place important privacy safeguards for Internet users.”

Google has tried to put the controversy behind it. It reached a \$7 million settlement with 38 states last year over the data collection. But consumers, who filed nearly a dozen civil lawsuits, are pressing forward. In 2011, those lawsuits were combined in one class action in federal court in San Francisco.

“Google wants desperately to avoid a trial on whether it violated federal wiretapping laws,” said Jeffrey Chester, executive director of the Center for Digital Democracy. “But it will now have to face the legal consequences.” Reported in: *USA Today*, June 30.

The Supreme Court is being called to weigh in on a years-long Freedom of Information Act lawsuit. The Electronic Frontier Foundation (EFF) on June 10 asked the high court to decide whether the Obama administration should hand over a secret memo allowing the FBI to obtain phone records without any judicial process.

“The public has a fundamental right to know how the federal government is interpreting surveillance and privacy laws,” EFF senior counsel David Sobel said in a statement. “If the [Justice Department’s] Office of Legal Counsel has interpreted away federal privacy protections in secret, the

public absolutely needs access to that analysis. There is no way for the public to intelligently advocate for reforms when we’re intentionally kept in the dark,” he added.

The disputed memo first came to light in a 2010 report from the department’s inspector general. After the government denied a request to release the memo under the Freedom of Information Act, the EFF sued in 2011.

So far, the case has been unsuccessful, but the online rights group is hoping the Supreme Court will end that streak. “It can’t be left to the executive branch’s discretion to release these critically important opinions,” EFF attorney Mark Rumold said in a statement. “We hope the Supreme Court will take the opportunity to clarify that this type of secret law has no place in a democratic society.”

The Justice Department’s Office of Legal Counsel provides legal authority for many of the government’s surveillance and judicial operations. It has previously been the target of activists’ ire over legal decisions approving so-called “enhanced interrogation techniques” such as waterboarding, which the Obama administration has since called a form of torture, as well as permitting targeted killings of Americans abroad. Reported in: *The Hill*, June 10.

libraries

New York, N.Y.

In what legal observers and fair-use advocates are calling a victory for libraries, a federal appeals court has upheld most of a lower court’s 2012 ruling in favor of the HathiTrust Digital Library in a copyright-infringement lawsuit brought by the Authors Guild and other plaintiffs.

The decision was another legal setback for the Authors Guild, which has also been fighting a long court battle over Google’s mass digitizing of books. But the appeals court’s move will encourage both scholars who want to text-mine digitized works and libraries that want to give print-disabled patrons greater access to content, among others.

Together with its partner institutions, the digital library holds millions of copies of digitized works, many of them still under copyright. In the ruling, handed down June 10, the U.S. Court of Appeals for the Second Circuit, in New York, agreed with the late Judge Harold Baer Jr. of the U.S. District Court in Manhattan that HathiTrust’s creation of a searchable, full-text database of those works counts as fair use. So does making texts available in different formats for the vision-impaired and other users with disabilities that make it hard to use print, the appeals court said.

“That one’s going to have a very large impact because now we have a court of appeals on record holding that providing copies to the print-disabled is fair use,” said James Grimmelmann, a professor of law at the University of Maryland and an expert on intellectual-property issues. “The holding that search is transformative fair use is basically the same” as the lower court’s, he said. The

Second Circuit ruling notes that users doing searches in HathiTrust's database don't have access to the full text of the works, which "fairly refutes the notion that this is a market that book authors could have hoped to license," Grimmelmann said.

In another blow to the guild, the appeals court also agreed with the lower court that the group does not have the "associational standing" or legal right to make copyright-infringement claims on behalf of its members. Individual authors could still sue, but "in the broader perspective this is a blow to the Authors Guild, which was basically told, 'No, you can't speak for authors,'" Grimmelmann said.

Foreign authors' groups, several of which joined the guild in the lawsuit, do have standing to sue under their countries' laws, the court said. It's not clear what effect that might have on the final outcome of the case.

The appeals court did vacate one part of Judge Baer's decision. The Authors Guild had argued that HathiTrust's holding digital copies of works for long-term preservation didn't count as fair use. The higher court said that the lower court didn't consider whether the plaintiffs had the standing to make that claim, and it sent that part of the ruling back to the lower court for further consideration. The court also said that claims over orphan works—those with uncertain copyright status, a subject of great interest to both libraries and authors—"are not ripe for adjudication."

All told, the ruling is "a huge win for HathiTrust and for libraries generally," said Brandon Butler, an intellectual-property expert and practitioner in residence at the Glushko-Samuels Intellectual Property Clinic at American University. Taken together with other major decisions at the appeals-court level nationally, he said, the ruling solidifies the idea that "putting a bunch of stuff in a computer and asking the computer to read it" without giving the user full-text access counts as fair use. "If there was ever any doubt about search engines, that's gone," Butler said.

In a statement in response to the ruling, HathiTrust underscored its role in expanding access to its partner libraries' collections. "We are especially proud of our services to provide access for print-disabled persons," the statement said. "We would like to extend a special thanks to the many researchers, legal scholars, libraries, and other individuals and organizations for their continued support and use of HathiTrust. Although the court returned one matter to the lower court, we are very happy with today's ruling and feel confident that future decisions will continue to uphold the work that we do."

ALA President Barbara Stripling released the following statement in response to the ruling:

"The Second Circuit today affirmed more than a lower court decision—it affirmed that the fair use of copyrighted material by libraries for the public is essential to copyright law. ALA is pleased that the court recognizes the tremendous value of libraries in securing the massive record of human knowledge on behalf of the general public and in

providing lawful access to works for research, educational, and learning purposes, including access for people with disabilities.

"The continued acknowledgement of the importance of fair use to enable learning and support for the development of a well-informed citizenry makes the U.S. copyright law unique and well-functioning."

This decision affirms that libraries can engage in mass digitization to improve the discovery of works and provide full access to those works to students with print disabilities enrolled at the respective HathiTrust institutions. The general public can search the database using keywords and locate titles held in 80 member institutions. Full text access to the underlying works is allowed only for students with print disabilities enrolled at the University of Michigan and certified as disabled by a qualified expert.

Students with print disabilities are blind or have a handicap that prevents them from reading printed text. Because of the full conversion of the texts to digital format that is accessible, these students can use adaptive technologies, such as text-to-speech, to read.

ALA will continue its defense of fair use in the HathiTrust case, should additional appeals be filed. Reported in: *Chronicle of Higher Education*, June 10.

schools

Washington, D.C.

A federal appeals court has ruled against a Washington special education teacher who contends he was dismissed in retaliation for blowing the whistle on alleged test tampering.

A panel of the U.S. Court of Appeals for the District of Columbia Circuit ruled unanimously that a school principal and the then-chancellor of the city's school system, Michelle Rhee, were entitled to immunity from the First Amendment retaliation suit filed by teacher Bruno K. Mpoy.

Mpoy became a provisional special education teacher in 2007 through the D.C. Teaching Fellows program and the New Teacher Project, court papers say. His lawsuit says his classroom was dirty and lacked textbooks, and that he was assigned teaching assistants who acted unprofessionally, sometimes inciting fights and disruption among students.

The suit alleged that Mpoy was asked by his principal to falsify the tests of his students to show that they had made acceptable progress, which he refused to do. Soon after, he faced warning letters from the principal over purported deficiencies, the suit says.

In June 2008, Mpoy sent an e-mail to Rhee detailing his classroom problems and the alleged actions of his principal regarding the tests. Soon after, Mpoy was informed his contract would not be renewed.

Mpoy sued the District of Columbia, the New Teacher Project, Rhee, and the principal. A federal district court in Washington allowed the suit to go forward against Rhee

and the principal in their personal capacities, but the court held that Mpoys speech, in the form of the e-mail to Rhee, was not protected under the First Amendment because it was made pursuant to his official duties. The court went on to say that even if the speech were protected, Rhee and the principal had qualified immunity from the suit.

In its July 15 decision in *Mpoy v. Rhee*, the D.C. Circuit court panel upheld the dismissal of the suit, but only on qualified immunity grounds for the two officials. The panel said the key part of Mpoys e-mail—the passage alleging test tampering—was not protected under D.C. Circuit precedent. That precedent holds that a government employee’s speech reporting conduct that interferes with his job duties is not protected, even when it is made outside the normal chain of command.

The panel took note, however, of the U.S. Supreme Court’s recent decision in *Lane v. Franks*, which held that sworn testimony outside the normal job duties of a public employee was protected under the First Amendment. (Mpoys allegation was not made in sworn testimony.) Still, the D.C. Circuit panel said that, putting aside the issue of sworn testimony, the Supreme Court’s focus on speech that was outside a public employee’s “normal job duties” might require it to re-examine the circuit precedent on whistleblowing speech.

However, that didn’t help Mpoys, the appeals panel said, because Rhee and the principal were still entitled to qualified immunity to the special education teacher’s suit.

“The defendants could reasonably have believed that they could fire Mpoys on account of” his e-mail to Rhee, the D.C. Circuit panel said. “Even if we are wrong in concluding as a matter of law that the email reported conduct that interfered with his job responsibilities, it surely would not have been unreasonable for the defendants to believe that it did, and hence that it was lawful to fire Mpoys under” the previous circuit precedent, the court said. Reported in: *Education Week*, July 17.

NSA surveillance

Coeur d’Alene, Idaho

Despite his reservations about applying precedent in the “digital age,” a federal judge dismissed a challenge to the government’s broad cellphone surveillance.

Anna Smith, a nurse in Coeur d’Alene, brought the lawsuit last year against President Barack Obama, Director of National Intelligence James Clapper, National Security Agency Director Keith Alexander, Secretary of Defense Charles Hagel, U.S. Attorney General Eric Holder and Federal Bureau of Investigation Director Robert Mueller.

Rep. Luke Malek (R-Coeur d’Alene), and Smith’s husband, Lukins & Annis attorney Peter Smith, filed the case for Smith on June 12, 2013, just days after former NSA contractor Edward Snowden leaked a secret court order that

forces Verizon to “turn over, every day, metadata about the calls made by each of its subscribers over the three-month period ending on July 19, 2013.”

“The government acknowledges that it is relying on Section 215 to collect ‘metadata’ about every phone call made or received by residents in the U.S.,” the complaint states, referring to the USA PATRIOT Act. “The practice is akin to having a government official monitoring every call to determine who plaintiff Anna Smith spoke to, when Anna Smith talked, for how long and from where.”

The complaint continues: “The government now possesses information about plaintiff Anna Smith, including but not limited to her associations and public movements, revealing a wealth of detail about her familial, political, professional, religious and intimate associations.”

Smith said the practice constitutes unreasonable searches under the Fourth Amendment.

U.S. District Court Judge Lynn Winmill nevertheless dismissed the complaint and refused to grant Smith an injunction based on precedent from the 1979 Supreme Court decision in *Smith v. Maryland*, which says “a person using the telephone ‘voluntarily conveys numerical information to the telephone company’ and ‘assumes the risk that the company will reveal to police the numbers he dialed.’”

Winmill raised questions, however, concerning cellphone technology and the ability to track a person’s precise location and to determine specific information, such as whether a person is walking or driving a car. The NSA has long denied it is paying attention to those details.

“While there is speculation that the NSA is tracking location, there is no evidence of that, and the agency denies it,” Winmill said. “Under these circumstances, the court will not assume that the NSA’s privacy intrusions include location tracking.”

Today’s technology makes detailed information readily available, the judge conceded. Citing U.S. District Judge Richard Leon’s decision last year in *Klayman v. Obama*, Winmill observed that “records that once would have revealed a few scattered tiles of information about a person now reveal an entire mosaic—a vibrant and constantly updating picture of the person’s life.”

Leon held that Klayman and the other opponents of the same surveillance were likely to succeed on their Fourth Amendment claim, and enjoined the NSA from collecting their phone records. That decision has been stayed, however, pending appeal.

“Judge Leon’s decision should serve as a template for a Supreme Court opinion. And it might yet,” Winmill wrote. “Justice (Sonia) Sotomayor is inclined to reconsider *Smith*, finding it ‘ill-suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks.’ But *Smith* was not overruled and it continues . . . to bind this court.” Reported in: Courthouse News Service, June 9.

cyberbullying

Albany, N.Y.

New York's highest court said July 1 that a law designed to criminalize cyberbullying was so broad that it violated the First Amendment, marking the first time a U.S. court weighed the constitutionality of such a law.

The 2011 Albany County law banned electronic communication intended to "harass, annoy, threaten...or otherwise inflict significant emotional harm on another person." The law was challenged on First Amendment grounds by Marquan Mackey-Meggs, who at age 15 in 2011 pleaded guilty under the law to creating a Facebook page that included graphic sexual comments alongside photos of classmates at his Albany-area high school.

The Court of Appeals in a 5-2 decision said it was possible to pass a law outlawing bullying via social media or text message that respected free speech rights, but the county's statute went too far.

"It appears that the provision would criminalize a broad spectrum of speech outside the popular understanding of cyberbullying," Judge Victoria Graffeo wrote for the court, "including, for example, an email disclosing private information about a corporation or a telephone conversation meant to annoy an adult."

The majority rejected a bid by the county to sever the provisions that violated free speech rights and leave the rest of the law intact.

In dissent, Judge Robert Smith said the law could have been saved by applying it only to children and deleting certain vague terms, such as "hate mail."

The decision reversed a lower court, which dismissed the free speech claims.

Mackey-Meggs did not appeal his conviction but pressed forward with the First Amendment challenge. Since the court overturned the law, however, the indictment against Mackey-Meggs was also struck down.

Albany County Executive Daniel McCoy said in a statement that he was disappointed with the decision and would work with county lawmakers "to craft a (new) law that both protects free speech and keep kids safe."

New York Civil Liberties Union represented Mackey-Meggs.

More than a dozen states, including Maryland, Washington and Louisiana, have adopted criminal sanctions for cyberbullying, according to the non-profit Cyberbullying Research Center. Lawmakers in New York and a handful of other states are considering similar laws.

Justin Patchin, a co-chair of the research center and a professor at the University of Wisconsin-Eau Claire, said that he was encouraged that the court said cyberbullying laws were not automatically unconstitutional.

"The problem is, it's going to be really tricky to write a law that is comprehensive in its coverage of bullying and at the same time passes constitutional muster," he said. Reported in: reuters.com, July 1.

rap music

Trenton, N.J.

Violent rap lyrics should not have been admitted into evidence in an attempted murder trial, New Jersey's highest court ruled August 4. The ruling upheld an appeals court that had thrown out Vonte Skinner's conviction for shooting a fellow drug dealer in 2005.

Both courts faulted the trial judge for allowing prosecutors to read the lyrics to jurors. Among the lyrics written years before the crime, Skinner boasted about "four slugs drillin' your cheek to blow your face off and leave your brain caved in the street."

In the 6-0 ruling, the state Supreme Court wrote that admitting the lyrics was highly prejudicial to the jury and wasn't outweighed by the lyrics' relevance to establishing motive or intent.

"In sum, rap lyrics, or like fictional material, may not be used as evidence of motive and intent except when such material has a direct connection to the specifics of the offense for which it is offered in evidence and the evidence's probative value is not outweighed by its apparent prejudice," Justice Jaynee LaVecchia wrote.

The case has been watched closely by civil liberties advocates who contend the lyrics should be considered protected free speech. In an *amicus* brief in support of Skinner, the ACLU New Jersey argued that rap lyrics, because of their violent imagery, are treated differently than other written works.

In its brief, the ACLU said that an analysis of similar cases in other states found that in about three-quarters of instances, judges allowed rap lyrics to be admitted as evidence.

Skinner's initial trial ended without a verdict, but he was convicted at a second trial of shooting Lamont Peterson multiple times at close range, leaving Peterson paralyzed from the waist down. Peterson testified the two men sold drugs as part of a three-man "team" and got into a dispute when Peterson began skimming some of the profits.

During the trial, state prosecutors read 13 pages of rap lyrics that were found in the back seat of the car Skinner was driving when he was arrested. Some of the writings were penned three or four years before the Peterson shooting.

In its ruling overturning the verdict, the appellate court said that caution must be exercised when allowing prior writings as evidence in a trial. The judges also wrote that the lyrics weren't necessary to buttress the state's case. Reported in: talkingpointsmemo.com, August 4.

defamation

Cincinnati, Ohio

On June 16, the U.S. Court of Appeals for the Sixth Circuit reversed an online libel case and annulled the award

of hundreds of thousands of dollars in damages. The court found that the site was protected under Section 230 of the Communications Decency Act, which bars website liability from material created by its users.

The case, known as *Sarah Jones v. Dirty World Entertainment Recordings LLC et al.*, concerns a website known as TheDirty.com. That site allows users to upload anonymous comments, photos, and videos that are almost always of a gossip-minded and salacious nature.

Between October 2009 and January 2010, Sarah Jones, a former cheerleader for the Cincinnati Bengals football team, was the target of a number of posts on the site. The first post provided a photo of her with Shayne Graham, then a kicker with the Bengals. The post alleged that Jones had “slept with every other Bengal Football player. This girl is a teacher too!! You would think with Graham’s paycheck he could attract something a little easier on the eyes Nik!”

More posts ensued, detailing that she was a high school teacher:

“Her ex Nate. . . cheated on her with over 50 girls in 4 yrs. . . in that time he tested positive for Chlamydia Infection and Gonorrhea. . . so im sure Sarah also has both. . . whats worse is he brags about doing sarah in the gym. . . football field. . . her class room at the school she teaches at DIXIE Heights.”

Court documents show that Jones sent the site’s operator, Nik Richie, also known as Hooman Karamian, “over 27 e-mails, pleading for Richie to remove these posts from the website, to no avail.”

By December 2009, Jones filed a lawsuit, which eventually went to a jury trial and resulted in a mistrial. The second trial, however, found in her favor, and she was awarded \$338,000 in damages.

However, the Sixth Circuit found that under Section 230, which bars liability of user-generated material, Richie and Dirty World were not liable.

As the court concluded: “Because (1) the defendants are interactive service providers, (2) the statements at issue were provided by another information content provider,

and (3) Jones’s claim seeks to treat the defendants as a publisher or speaker of those statements, the CDA bars Jones’s claims. Given the role that the CDA plays in an open and robust Internet by preventing the speech-chilling threat of the heckler’s veto, we point out that determinations of immunity under the CDA should be resolved at an earlier stage of litigation.”

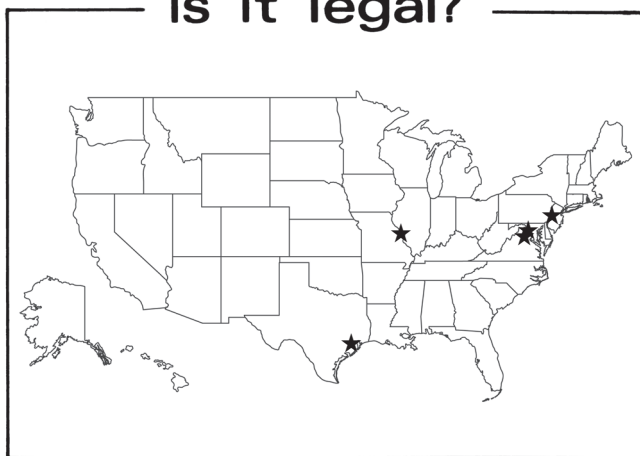
The lower court had held that by “encouraging” negative content, the website could be held liable when its users went beyond critical and posted something unlawful. In an *amicus* brief the ACLU argued this result was wrong and very dangerous for all kinds of valuable online speech, including online reviews and other consumer-driven sites. Think, for example, of a consumer protection website that encourages users to submit reports of defective products, or a website where users can share stories about companies filing aggressive “take-down” letters demanding that speech be removed from the Internet.

The ACLU *amicus* reminded the court to remember the incredible public value in this kind of negative or critical speech; it’s certainly not something you’re going to get from the companies themselves. And it’s only if websites offer platforms for this kind of critical speech that consumers can speak, listen, and connect to get this kind of information.

The Sixth Circuit, in a “case of first impression in this Circuit,” agreed with these arguments, and recognized the importance of websites that allow and even encourage “critical” content. The court noted:

“Some of this content will be unwelcome to others—e.g., unfavorable reviews of consumer products and services, allegations of price gouging, complaints of fraud on consumers, reports of bed bugs, collections of cease-and-desist notices relating to online speech. . . . Under an encouragement test of development, these websites would lose the immunity under the CDA and be subject to hecklers’ suits aimed at the publisher.” Reported in: arstechnica.com, June 16; aclu.org, June 16. □

is it legal?



schools

Bucks County, Pennsylvania

A Bucks County high school teacher whose blog drew national attention for calling students “frightfully dim” and “utterly loathsome” was fired June 24 for “unsatisfactory performance.”

Natalie Munroe, an 11th-grade English teacher at Central Bucks High School East for six years, was dismissed by a 7-0 vote of the school board. The board followed the administration’s recommendation, based on a year of class observations and evaluations that Munroe’s lawyer has called retaliatory.

“Ms. Munroe was, at best, a satisfactory teacher and was experiencing performance difficulties well before her blog became an issue,” the board’s president, Paul Faulkner, said, reading from a statement.

Seeking to keep her job, Munroe filed suit June 27 in U.S. District Court in Philadelphia, claiming the school district violated her constitutional right to free speech “by harassing and retaliating against her.” The alleged retaliation was for her blog posts labeling some students as “rat-like,” “tactless,” and “dunderheads.”

The posts by “Natalie M” were meant to be anonymous and did not name the school, students, or colleagues, but they included her photograph.

Her dismissal “has nothing to do with free speech,” Faulkner said, “but rather [the board’s] obligation to have satisfactory teachers in its classrooms.” Munroe’s performance was monitored and observed the same as other teachers’ performance was, he said.

Munroe’s lawyer, Steven Rovner, said the board’s action was expected. “They brought her back to set her up to fail,” Rovner said. “That’s why we filed the lawsuit against the district.”

Munroe was suspended for the blog posts in February 2011, after word of them spread on Facebook and other social media. Officials reinstated her last summer, citing her legal right to work, but rejected her request for a transfer to one of the district’s two other high schools. In an unusual move, students were allowed to opt out of her classes, leaving her with abnormally small classes.

Starting in October, administrators conducted “unannounced observations of Munroe’s classes,” according to her lawsuit. After four unsatisfactory classroom evaluations, Munroe was ordered to submit daily lesson plans, according to the suit. On June 1, she received her third unsatisfactory performance evaluation—two are grounds for dismissal—and was told of the administration’s plans to recommend her termination, according to the suit.

Munroe, who has done limited blogging since last year’s uproar, responded in a post, “I’ve been set up. . . . Though it will surely be implied otherwise, I know the truth, my colleagues know the truth, my students and their parents know the truth. I stand by my work this year, and every year before.”

The Central Bucks Education Association filed a grievance with the district to protect Munroe’s contractual rights, union president Keith Sinn said. Reported in: *Philadelphia Inquirer*, June 28.

Needville, Texas

A sophomore at a Texas high school was given a two-day in-school suspension for refusing to stand during the Pledge of Allegiance to the flag—something he said he does to protest the National Security Agency’s spy tactics.

“I’m really tired of our government taking advantage of us,” Needville High School student Mason Michalec said. “I don’t agree with the NSA spying on us, and I don’t agree with any of those Internet laws.”

Mason, 15, said he’s refused to stand up during the pledge the entire school year. But a different teacher noticed his behavior and reported him to the principal. “And she told me, ‘This is my classroom. This is the principal’s request. You’re going to stand,’” Mason said. “And I still didn’t stand, and she said she was going to write me up.”

The principal, meanwhile, said the rules won’t change and if Mason continues his defiance, more suspensions will follow. “I’m angry and frustrated and annoyed that they would try to write me up for something I have the right to do,” Mason said. Reported in: *Washington Times*, May 9.

news media

Washington, D.C.

Over three dozen journalist organizations including the Radio Television Digital News Association, National Press Foundation, and the Society of Professional Journalists,

have asked the President to drop “excessive controls” on public information by federal agencies, branding it “politically driven suppression of news and information about federal agencies.”

There has been an ongoing tension between broadcast, print and online journalists and the Obama administration, with complaints that the Administration has limited access to events, while providing its own “coverage” through official channels.

In a letter to President Obama, the groups complained about policies that require journalists to go through public information officers (PIOs) before talking with staff and that have PIOs vetting interview questions and monitoring interviews with sources.

“You recently expressed concern that frustration in the country is breeding cynicism about democratic government,” the letter began. “You need look no further than your own administration for a major source of that frustration—politically driven suppression of news and information about federal agencies. We call on you to take a stand to stop the spin and let the sunshine in.”

“The practices have become more and more pervasive throughout America, preventing information from getting to the public in an accurate and timely matter,” said David Cuillier, president of the Society of Professional Journalists, in announcing the letter. “The president pledged to be the most transparent in history. He can start by ending these practices now.”

Among the general practices the groups identify, saying some consider it censorship, are: officials blocking reporters’ requests to talk to specific staff people; excessive delays in answering interview requests that stretch past reporters’ deadlines; officials conveying information ‘on background,’ refusing to give reporters what should be public information unless they agree not to say who is speaking; federal agencies blackballing reporters who write critically of them.

The letter also cited a host of specific examples of those practices. Reported in: *Broadcasting and Cable*, July 8.

“sexting”

Manassas, Virginia

Manassas City police and Prince William County prosecutors took a unique approach to collecting evidence in a “sexting” case involving a 17-year-old male: Authorities sought to take a photo of the teen’s erect genitalia to compare with a cellphone video allegedly sent to his girlfriend, his attorneys said.

The case sparked anger from the boy’s family, local lawyers and legal observers, who say that the amount of time and resources spent by law enforcement on private messages between teens is excessive. The teen’s attorneys are particularly incensed that investigators want to take

him to a hospital for an injection that would force him to become erect.

The teen is facing two felony charges in juvenile court, manufacturing and distributing child pornography, which could lead not only to incarceration until he’s 21 but also to inclusion on the state sex offender registry, at a judge’s discretion, for up to the rest of his life.

“The prosecutor’s job is to seek justice,” said the teen’s defense attorney, Jessica Harbeson Foster. “What is just about this? How does this advance the interest of the commonwealth? . . . Taking him down to the hospital so he can get an erection in front of all those cops, that’s traumatizing.”

Manassas City police released a statement saying that the case was opened because the teen allegedly sent “pornographic videos . . . after repeatedly being told to stop.” The police said it was not their policy, nor the prosecutors,’ “to authorize invasive search procedures of suspects in cases of this nature, and no such procedures have been conducted in this case.”

Foster noted the warrant was discussed by prosecutors twice in open court, both before and after it was obtained, although it had not been made public because it has not been served—a Prince William judge allowed the 17-year-old to leave the area before the warrant was served and the photos could be taken.

Advocates at the National Center for Missing and Exploited Children and officials at the Justice Department have issued cautions not only about the dangers of sexting but also about the dangers of overreacting to sexting. “You have to take every case seriously,” said John Shehan of NCMEC. “But you have to look at different scenarios. . . . We don’t think a blanket policy of charging all youths is going to remedy the problem.”

Shehan said the NCMEC also “recognizes the consequences of charging a teenager like this, there can be a lifetime of repercussions. We don’t necessarily think that’s the best way to go in the more-minor situations.” A Fairfax County legislator proposed in this year’s General Assembly session that sexting between minors be reduced from a felony to a misdemeanor, but the bill was defeated in a House subcommittee.

Michael J. Iacopino, a veteran New Hampshire defense lawyer and member of the National Association of Criminal Defense Lawyers’ sex offender policy task force, asked, “What’s the scientific background to establish any distinction or difference [between the photos]?”

Foster said the case began in January when the teen’s 15-year-old girlfriend sent photos of herself to the 17-year-old, who in turn sent her the video in question. The girl has not been charged, and her mother filed a complaint about the boy’s video, Foster said. He was served felony “petitions” from juvenile court but was not arrested.

In June, after the case was dismissed on a technicality, prosecutors refiled the charges. This time, Manassas City

police arrested him and took photos of his genitals against his will, Foster said.

The case was set for trial on July 1, at which time, Foster said, Assistant Commonwealth's Attorney Claiborne Richardson II told her that her client must either plead guilty or police would obtain another search warrant for comparison to the evidence from his cellphone. Foster asked how that would be accomplished and said she was told that "we just take him down to the hospital, give him a shot and then take the pictures that we need."

The teen declined to plead guilty. Foster said the prosecutor then requested and received a continuance so police could obtain a search warrant for the photos of his genitalia. Two days later, both sides were back in court. Foster had filed a motion to allow her client to travel out of state to visit family. Richardson wanted the teen to comply with the search warrant before he left. Juvenile Court Judge Lisa Baird declined to order that and allowed the teen to leave the area.

Despite two discussions of the warrant by the prosecutor in juvenile court, Prince William County Commonwealth's Attorney Paul B. Ebert said that police told him "these allegations [by the teen's lawyers] lack credibility." He said he would look into the matter further but did not respond to subsequent inquiries.

Carlos Flores Laboy, appointed the teen's *guardian ad litem* in the case, said he thought it was just as illegal for the Manassas City police to create their own child pornography as to investigate the teen for it.

"They're using a statute that was designed to protect

children from being exploited in a sexual manner to take a picture of this young man in a sexually explicit manner," Flores Laboy said. "The irony is incredible." Reported in: *Washington Post*, July 9.

police

St. Charles, Missouri

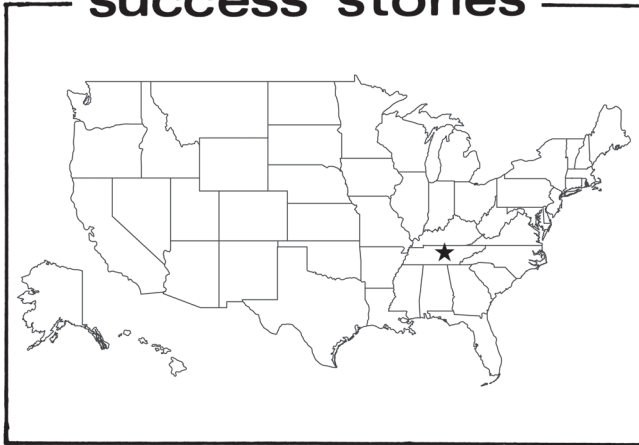
Last August, Kyle Hamilton used his mobile phone to document an interaction between police officers and a distraught woman on Main Street in St. Charles. A mounted police officer grabbed Hamilton by his shirt collar as he was recording. Another officer threatened to arrest Hamilton, took his phone, viewed and deleted the recordings, and then ordered him to leave.

Representing Hamilton, the American Civil Liberties Union of Missouri (ACLU of Missouri) filed a lawsuit June 3 against the City of St. Charles and the police officers.

"The First Amendment means less if police can grab and destroy a recording of them performing their duties in public," explains Tony Rothert, legal director of the ACLU of Missouri.

"The government works for us, so we have the right to record public officials to ensure they are doing their job properly," says Jeffrey A. Mittman, executive director of the ACLU of Missouri. "The ACLU has a long history of defending this kind of check to prevent abuse of government power." Reported in: aclu.org, June 3. □

success stories



schools

Wilson County, Tennessee

A vote to ban a book from the Wilson County Schools reading list was rescinded May 30. *The Curious Incident of the Dog in the Night Time* was banned from the reading list at the board's May 5 meeting and was removed from the possession of students soon after. However, the books were given back to students on the advice of school board attorney Mike Jennings due to a possible conflict with a board policy.

"The word 'ban' was a bad choice of words. I wanted it removed from the reading list, but instead we go out and start removing books from libraries and kids' arms and they couldn't do reports. That was not the intent of that," said board member Wayne McNeese, who made the original motion.

"This particular book that we're talking about; I certainly don't believe in censorship, but I believe that we could find a book where the author could express themselves and get their point across in another way than what this particular author did," board member Larry Tomlinson said. Tomlinson was not present at the meeting when the original vote was taken.

"I applaud Wayne for making that motion that he did that night. If we were wrong and violated some of our policies, we need to correct that."

At the May 30 meeting, Interim Director of Schools Mary Ann Sparks explained a revision to the opt-out policy provided to parents each school year. "The last board meeting we talked about the selection of books for high school

reading lists. In the past our schools have had a plan for parents to opt out of a reading selection if they did not think it was appropriate for their children," she said.

"The instructional supervisors and I looked at what we are doing now and we tried to tweak that to what we think will help answer all those questions."

A motion made by board member Wayne McNeese to ban the book from any county school's reading list passed at the May 5 meeting.

Board Chair Don Weathers asked to rescind the previous motion in light of the new policy recommended by Sparks.

"We need to rescind that board action that we took and then use these steps to ensure the board that the parent will have notification when objectionable materials are included in the reading list. That there is a wide enough range of books in the preferred or mandatory reading lists to give students an option to take other than a book that would have objectionable material and that teachers would be working within those confines or guidelines and not discriminate or have anything other than the best intentions in dealing with that situation," he said.

McNeese asked why there was a need to rescind a motion that "is not being followed. What's the point?" McNeese asked.

Sparks clarified that when the motion was made there was no timeline for implementation given. "When you made the motion, there wasn't a timeline put on it. You didn't say if it was for this year or next year."

Weathers, who voted in the affirmative to ban the book at the May 5 meeting, said "At this point I would make the motion to rescind that vote with the provision that this new procedure is followed to protect both parents, students and the school system from any of these objectionable materials being mandatory when the parents don't want it."

The vote to rescind the previous action passed unanimously. Reported in: *Wilson County News*, June 3. □

over-filtering harms education . . . from page 109

advocating that school and library leaders raise awareness of the negative consequences of over-filtering on K-12 education. Additionally, the report recommends that the American Library Association work with educational groups and associations to develop a toolkit of resources that refocuses filtering and access policies.

The report was released jointly by the ALA Office for Information Technology Policy (OITP) and the ALA Office for Intellectual Freedom (OIF), and written by OITP consultant Kristen Batch. "Fencing Out Knowledge" is based on a year-long study that included a two-day symposium during the summer 2013 and other research.

"Passed in 2000, CIPA was designed to block adults and minors from accessing online images deemed 'obscene,'

‘child pornography,’ or ‘harmful to minors’ for minors less than 17 years old under the law by requiring public libraries and schools receiving certain federal funding

to install software filters on their Internet-accessible computers,” the report’s Executive Summary notes. “Yet the use of the Internet is vastly different today than when the U.S. Supreme Court upheld the constitutionality of this law in 2003. Indeed, decision makers could not have predicted the ways in which the Internet and devices used to access online content would revolutionize learning opportunities in and out of school. But as the means used to access and create content online have evolved, filtering in public libraries and schools has simply increased instead of evolving in a parallel fashion. Filtered content today, particularly in schools, encompasses entire social media and social networking sites as well as interactive or collaborative websites, extending far beyond what the law requires.”

The report “identified an overreach in the implementation of CIPA—far beyond the requirements and intent of the law. This overreach stems from misinterpretations of the law, different perceptions of how to filter, and limitations of Internet filtering software.”

“Many schools block broad swaths of information that all users are legally entitled to access,” the report concluded. “Beyond filtering entire social media and social networking sites, schools increasingly block access to any site that is interactive or collaborative. Another trend in schools is to rely (mistakenly) on filtering for dealing with issues of hacking, copyright infringement, and cyberbullying, denying access to websites and technology. The resulting restriction of exposure to complex and challenging websites and of the use of interactive tools and platforms represents a critical missed opportunity to prepare students to be responsible users, consumers, and producers of online content and resources.”

The full report may be accessed at: http://www.ala.org/offices/sites/ala.org.offices/files/content/oitp/publications/issuebriefs/cipa_report.pdf. Reported in: ALA Press Release, June 11. □

higher ed, library groups . . . from page 112

regardless of local market conditions.

Prohibit Blocking: ISPs and public broadband providers should not be permitted to block access to legal web sites, resources, applications, or Internet-based services.

Protect Against Unreasonable Discrimination: Every person in the United States should be able to access legal content, applications, and services over the Internet, without “unreasonable discrimination” by the owners and operators of public broadband networks and ISPs. This will ensure that ISPs do not give favorable transmission to their affiliated content providers or discriminate against particular

Internet services based on the identity of the user, the content of the information, or the type of service being provided. “Unreasonable discrimination” is the standard in Title II of the Communications Act; the FCC has generally applied this standard to instances in which providers treat similar customers in significantly different ways.

Prohibit Paid Prioritization: Public broadband providers and ISPs should not be permitted to sell prioritized transmission to certain content, applications, and service providers over other Internet traffic sharing the same network facilities. Prioritizing certain Internet traffic inherently disadvantages other content, applications, and service providers—including those from higher education and libraries that serve vital public interests.

Prevent Degradation: Public broadband providers and ISPs should not be permitted to degrade the transmission of Internet content, applications, or service providers, either intentionally or by failing to invest in adequate broadband capacity to accommodate reasonable traffic growth.

Enable Reasonable Network Management: Public broadband network operators and ISPs should be able to engage in reasonable network management to address issues such as congestion, viruses, and spam as long as such actions are consistent with these principles. Policies and procedures should ensure that legal network traffic is managed in a content-neutral manner.

Provide Transparency: Public broadband network operators and ISPs should disclose network management practices publicly and in a manner that 1) allows users as well as content, application, and service providers to make informed choices; and 2) allows policy-makers to determine whether the practices are consistent with these network neutrality principles. This rule does not require disclosure of essential proprietary information or information that jeopardizes network security.

Continue Capacity-Based Pricing of Broadband Internet Access Connections: Public broadband providers and ISPs may continue to charge consumers and content, application, and service providers for their broadband connections to the Internet, and may receive greater compensation for greater capacity chosen by the consumer or content, application, and service provider.

Adopt Enforceable Policies: Policies and rules to enforce these principles should be clearly stated and transparent. Any public broadband provider or ISP that is found to have violated these policies or rules should be subject to penalties, after being adjudicated on a case-by-case basis.

Accommodate Public Safety: Reasonable accommodations to these principles can be made based on evidence that such accommodations are necessary for public safety, health, law enforcement, national security, or emergency situations.

Maintain the Status Quo on Private Networks: Owners and operators of private networks that are not openly available to the general public should continue to operate according to the long-standing principle and practice that private

networks are not subject to regulation. End users (such as households, companies, coffee shops, schools, or libraries) should be free to decide how they use the broadband services they obtain from network operators and ISPs.

what is “net neutrality?”

The following is taken from <http://www.ala.org/advocacy/telecom/netneutrality>, which explains ALA’s position on net neutrality:

Network Neutrality (or “net” neutrality) is the concept of online non-discrimination. It is the principle that consumers/citizens should be free to get access to—or to provide—the Internet content and services they wish, and that consumer access should not be regulated based on the nature or source of that content or service.

Information providers—which may be websites, online services, etc., and who may be affiliated with traditional commercial enterprises but who also may be individual citizens, libraries, schools, or nonprofit entities—should have essentially the same quality of access to distribute their offerings. “Pipe” owners (carriers) should not be allowed to charge some information providers more money for the same pipes, or establish exclusive deals that relegate everyone else (including small noncommercial or startup entities) to an Internet “slow lane.” This principle should hold true even when a broadband provider is providing Internet carriage to a competitor.

Net neutrality was a founding principle of the Internet. It incorporates both the “common carrier” laws that have long governed the phone lines used for both voice telephony and dial up access. Now many consumers receive broadband service over other technologies (cable, DSL) that are not subject to the same common-carriage requirements. While these technologies are unquestionably superior to dial-up, the lack of enforceable net neutrality principles is of concern to many. Cable and DSL companies are planning to engage in “bit discrimination” by providing faster connections to websites and services that pay a premium, or by preferring their own business partners when delivering content.

The American Library Association is a strong advocate for intellectual freedom, which is the “right of all peoples to seek and receive information from all points of view without restriction.” Intellectual freedom is critical to our democracy, because we rely on people’s ability to inform themselves. The Internet connects people of diverse geographical, political, or ideological origins, greatly enhancing everyone’s ability to share and to inform both themselves and others.

Our libraries’ longstanding commitment to freedom of expression in the realm of content is well-known; in the context of the net neutrality debate, however, we believe it is equally important to stress that the freedom of libraries and librarians to provide innovative new kinds of

information services will be central to the growth and development of our democratic culture. A world in which librarians and other noncommercial enterprises are of necessity limited to the Internet’s “slow lanes” while high-definition movies can obtain preferential treatment seems to us to be overlooking a central priority for a democratic society—the necessity of enabling educators, librarians, and, in fact, all citizens to inform themselves and each other just as much as the major commercial and media interests can inform them.

The ability of the Internet to spread and share ideas is only getting better. With modern technology, individuals and small groups can produce rich audio and video resources that used to be the exclusive domain of large companies. We must work to ensure that these resources are not relegated to second-class delivery on the Internet—or else the intellectual freedoms fostered by the Internet will be constrained.

One application that libraries are especially invested in is distance learning. Classes offered using audio and video streamed over the Internet have huge potential to bring expert teachers into the homes of students around the globe.

Some of the “pipe” owners argue that net neutrality is unnecessary regulation that will stifle competition and slow deployment of broadband technologies. But the truth is there is already only a little competition between broadband providers. In most parts of the U.S., there are at most two companies that provide a broadband pipe to your home: a telephone company and a cable company. Both of these industries are already regulated because they are natural monopolies: once a cable is laid to your house, there really is no rational, non-wasteful reason to lay another cable to your house, since you only need one at a time; therefore, most communities only allow one cable or telephone company to provide service to an area, and then regulate that company so to prevent abuse of the state-granted monopoly. Thus, we don’t allow phone companies to charge exorbitant amounts for local service; nor do we permit a cable company to avoid providing service to poor neighborhoods.

Contrast the quasi-monopoly on broadband pipes with the intensely competitive market of web content and services. There are millions of websites out there and countless hours of video and audio, all competing for your time, and sometimes your money.

With the advent of broadband connections, the telecom and cable companies have found a new way to exploit their state-granted monopoly: leverage it into a market advantage in Internet services and content. This would harm competition in the dynamic, innovative content and services industry without solving the lack of real competition in the broadband access market.

In contrast, net neutrality will encourage competition in online content and services to stay strong. By keeping broadband providers from raising artificial price barriers to competition, net neutrality will preserve the egalitarian bit-blind principles that have made the Internet the most

competitive market in history.

The American Library Association supports Net Neutrality legislation that preserves the competitive online markets for content and services. Bandwidth and access should be offered on equal terms to all willing to pay. Otherwise, broadband providers will be free to leverage their quasi-monopolies into lucrative but market-distorting agreements. The vitality of voices on the Internet is critical to the intellectual freedom that libraries around the world are trying to protect and promote. Laws that preserve Net Neutrality are the best way to preserve a vibrant diversity of viewpoints into the foreseeable future. □

IFC report . . . from page 113

(www.alastore.ala.org/). The tagline for this year's merchandise is "Have You Seen Us?" The artwork is prominently featured on ala.org/bbooks.

More information on Banned Books Week can be found at www.ala.org/bbooks.

ACTION ITEMS

Intellectual Freedom Manual—Ninth Edition

The Office for Intellectual Freedom is working with ALA Editions toward publication of the ninth edition of the *Intellectual Freedom Manual*. Publication of this book is scheduled to coincide with the 2015 Annual Conference. In preparation for the new edition, the Intellectual Freedom Committee reviewed ALA's intellectual freedom policies including the Interpretations to the Library Bill of Rights.

The Committee revised the following Interpretations: "Access to Library Resources and Services for Minors" (see page 137); "Access to Resources and Services in the School Library Media Program" (see page 138); "Advocating for Intellectual Freedom" (see page 139); "Challenged Resources" (see page 140); "Diversity in Collection Development" (see page 140); "Exhibit Spaces and Bulletin Boards" (see page 141); "Expurgation of Library Resources" (see page 141); "Intellectual Freedom Principles for Academic Libraries" (see page 142); "Labeling and Rating Systems" (see page 143); "Minors and Internet Activity" (see page 143); "Prisoners' Right to Read" (see page 144); "Privacy" (see page 145); "Restricted Access to Library Materials" (see page 147); and "The Universal Right to Free Expression" (see page 148). After thorough discussion of these policies, the Committee approved the documents as amended.

Proposed revisions to the Interpretations were emailed on April 22, 2014, to the ALA Executive Board, Council, Divisions, Council committees, Round Tables, and Chapter Relations. The IFC considered comments received both

prior to and during the 2014 Annual Conference and now is moving adoption of these 14 policies.

In closing, the Intellectual Freedom Committee thanks the division and chapter intellectual freedom committees, the Intellectual Freedom Round Table, the unit liaisons, and the OIF staff for their commitment, assistance, and hard work.

Access to Library Resources and Services for Minors

An Interpretation of the Library Bill of Rights

Library policies and procedures that effectively deny minors equal and equitable access to all library resources and services available to other users violate the American Library Association's *Library Bill of Rights*. The American Library Association opposes all attempts to restrict access to library services, materials, and facilities based on the age of library users.

Article V of the *Library Bill of Rights* states, "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." The "right to use a library" includes free access to, and unrestricted use of, all the services, materials, and facilities the library has to offer. Every restriction on access to, and use of, library resources, based solely on the chronological age, educational level, literacy skills, or legal emancipation of users violates Article V.

Libraries are charged with the mission of providing services and developing resources to meet the diverse information needs and interests of the communities they serve. Services, materials, and facilities that fulfill the needs and interests of library users at different stages in their personal development are a necessary part of library resources. The needs and interests of each library user, and resources appropriate to meet those needs and interests, must be determined on an individual basis. Librarians cannot predict what resources will best fulfill the needs and interests of any individual user based on a single criterion such as chronological age, educational level, literacy skills, or legal emancipation. Equitable access to all library resources and services shall not be abridged through restrictive scheduling or use policies.

Libraries should not limit the selection and development of library resources simply because minors will have access to them. Institutional self-censorship diminishes the credibility of the library in the community and restricts access for all library users.

Children and young adults unquestionably possess First Amendment rights, including the right to receive information through the library in print, sound, images, data, games, software, and other formats.¹ Constitutionally protected speech cannot be suppressed solely to protect children or young adults from ideas or images a legislative body believes to be unsuitable for them.² Librarians and library governing bodies should not resort to age restrictions in

an effort to avoid actual or anticipated objections because only a court of law can determine whether or not content is constitutionally protected.

The mission, goals, and objectives of libraries cannot authorize librarians or library governing bodies to assume, abrogate, or overrule the rights and responsibilities of parents and guardians. As “Libraries: An American Value” states, “We affirm the responsibility and the right of all parents and guardians to guide their own children’s use of the library and its resources and services.” Librarians and library governing bodies cannot assume the role of parents or the functions of parental authority in the private relationship between parent and child. Librarians and governing bodies should maintain that only parents and guardians have the right and the responsibility to determine their children’s—and only their children’s—access to library resources. Parents and guardians who do not want their children to have access to specific library services, materials, or facilities should so advise their children.

Librarians and library governing bodies have a public and professional obligation to ensure that all members of the community they serve have free, equal, and equitable access to the entire range of library resources regardless of content, approach, or format. This principle of library service applies equally to all users, minors as well as adults. Lack of access to information can be harmful to minors. Librarians and library governing bodies must uphold this principle in order to provide adequate and effective service to minors.

Adopted June 30, 1972, by the ALA Council; amended July 1, 1981; July 3, 1991; June 30, 2004; July 2, 2008; and July 1, 2014.

Notes

1. See *Brown v. Entertainment Merchants Association, et al.* 564 U.S. 08-1448 (2011): a) Video games qualify for First Amendment protection. “Like protected books, plays, and movies, they communicate ideas through familiar literary devices and features distinctive to the medium. And ‘the basic principles of freedom of speech . . . do not vary’ with a new and different communication medium.”
2. See *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975): “Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them. In most circumstances, the values protected by the First Amendment are no less applicable when government seeks to control the flow of information to minors.” See also *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969); *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943); *AAMA v. Kendrick*, 244 F.3d 572 (7th Cir. 2001).

Access to Resources and Services in the School Library Media Program

An Interpretation of the Library Bill of Rights

The school library plays a unique role in promoting, protecting, and educating about intellectual freedom. It serves as a point of voluntary access to information and ideas and as a learning laboratory for students as they acquire critical thinking and problem-solving skills needed in a pluralistic society. Although the educational level and program of the school necessarily shape the resources and services of a school library, the principles of the American Library Association’s *Library Bill of Rights* apply equally to all libraries, including school libraries. Under these principles, all students have equitable access to library facilities, resources, and instructional programs.

School librarians assume a leadership role in promoting the principles of intellectual freedom within the school by providing resources and services that create and sustain an atmosphere of free inquiry. School librarians work closely with teachers to integrate instructional activities in classroom units designed to equip students to locate, evaluate, and use a broad range of ideas effectively. Intellectual freedom is fostered by educating students in the use of critical thinking skills to empower them to pursue free inquiry responsibly and independently. Through resources, programming, and educational processes, students and teachers experience the free and robust debate characteristic of a democratic society.

School librarians cooperate with other individuals in building collections of resources that meet the needs as well as the developmental and maturity levels of students. These collections provide resources that support the mission of the school district and are consistent with its philosophy, goals, and objectives. Resources in school library collections are an integral component of the curriculum and represent diverse points of view on both current and historical issues. These resources include materials that support the intellectual growth, personal development, individual interests, and recreational needs of students.

While English is, by history and tradition, the customary language of the United States, the languages in use in any given community may vary. Schools serving communities in which other languages are used make efforts to accommodate the needs of students for whom English is a second language. To support these efforts, and to ensure equitable access to resources and services, the school library provides resources that reflect the linguistic pluralism of the community.

Members of the school community involved in the collection development process employ educational criteria to select resources unfettered by their personal, political, social, or religious views. Students and educators served by the school library have access to resources and services free of constraints resulting from personal, partisan, or doctrinal disapproval. School librarians resist efforts by individuals

or groups to define what is appropriate for all students or teachers to read, view, hear, or access regardless of technology, formats or method of delivery.

Major barriers between students and resources include but are not limited to: imposing age, grade-level, or reading-level restrictions on the use of resources; limiting the use of interlibrary loan and access to electronic information; charging fees for information in specific formats; requiring permission from parents or teachers; establishing restricted shelves or closed collections; and labeling. Policies, procedures, and rules related to the use of resources and services support free and open access to information.

It is the responsibility of the governing board to adopt policies that guarantee students access to a broad range of ideas. These include policies on collection development and procedures for the review of resources about which concerns have been raised. Such policies, developed by persons in the school community, provide for a timely and fair hearing and assure that procedures are applied equitably to all expressions of concern. It is the responsibility of school librarians to implement district policies and procedures in the school to ensure equitable access to resources and services for all students.

Adopted July 2, 1986, by the ALA Council; amended January 10, 1990; July 12, 2000; January 19, 2005; July 2, 2008; and July 1, 2014.

Advocating for Intellectual Freedom

An Interpretation of the Library Bill of Rights

Educating the American public, including library staff, on the value of intellectual freedom is fundamental to the mission of libraries of all types. Intellectual freedom is a universal human right that involves both physical and intellectual access to information and ideas. Libraries provide physical access through facilities, resources, and services and foster awareness of intellectual freedom rights within the context of educational programs and instruction in essential information skills.

The universal freedom to express information and ideas is stated in the Universal Declaration of Human Rights, Article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

The importance of education to the development of intellectual freedom is expressed in the Universal Declaration of Human Rights, Article 26:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental

stages. . . .

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial, or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

In addition, Article I of the American Library Association's *Library Bill of Rights* "affirms that all libraries are forums for information and ideas." Physical access to information is listed as the first principle:

Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

Article II of the *Library Bill of Rights* emphasizes the importance of fostering intellectual access to information by providing materials that allow users to evaluate content and context and find information representing multiple points of view:

Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

Libraries of all types foster education by promoting the free expression and interchange of ideas, leading to empowered lifelong learners. Libraries use resources, programming, and services to strengthen intellectual and physical access to information and thus build a foundation of intellectual freedom; developing collections (both real and virtual) with multiple perspectives and individual needs of users in mind; providing programming and instructional services framed around equitable access to information and ideas; and teaching information skills and intellectual freedom rights integrated appropriately throughout the spectrum of library programming.

Through educational programming and instruction in information skills, libraries empower individuals to explore ideas, access and evaluate information, draw meaning from information presented in a variety of formats, develop valid conclusions, and express new ideas. Such education facilitates intellectual access to information and offers a path to a robust appreciation of intellectual freedom rights.

Adopted July 15, 2009, by the ALA Council; amended July 1, 2014.

Challenged Resources

An Interpretation of the Library Bill of Rights

“Libraries: An American Value” states, “We protect the rights of individuals to express their opinions about library resources and services.” The American Library Association declares as a matter of firm principle that it is the responsibility of every library to have a clearly defined written policy for collection development that includes a procedure for review of challenged resources. Collection development applies to print and media resources or formats in the physical collection. It also applies to digital resources such as databases, e-books and other downloadable and streaming media.

Content filtering is not equivalent to collection development. Content filtering is exclusive, not inclusive, and cannot effectively curate content or mediate access to resources available on the Internet. This should be addressed separately in the library’s acceptable use policy. These policies reflect the American Library Association’s *Library Bill of Rights* and are approved by the appropriate governing authority.

Challenged resources should remain in the collection and accessible during the review process. The *Library Bill of Rights* states in Article I that “Materials should not be excluded because of the origin, background, or views of those contributing to their creation,” and in Article II, that “Materials should not be proscribed or removed because of partisan or doctrinal disapproval.” Freedom of expression is protected by the Constitution of the United States, but constitutionally protected expression is often separated from unprotected expression only by a dim and uncertain line. The Supreme Court has held that the Constitution requires a procedure designed to examine critically all challenged expression before it can be suppressed.¹ This procedure should be open, transparent, and conform to all applicable open meeting and public records laws. Resources that meet the criteria for selection and inclusion within the collection should not be removed.

Therefore, any attempt, be it legal or extra-legal,² to regulate or suppress resources in libraries must be closely scrutinized to the end that protected expression is not abridged.

Adopted June 25, 1971; amended July 1, 1981; January 10, 1990; January 28, 2009, and July 1, 2014, by the ALA Council.

Notes

1. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).
2. “Extra-legal” refers to actions that are not regulated or sanctioned by law. These can include attempts to remove or suppress materials by library staff and library board members that circumvent the library’s collection development policy, or actions taken by elected officials or library board members outside the established legal process for making legislative or board decisions. “Legal process” includes challenges to library materials initiated and conducted pursuant to the library’s collection development policy, actions taken by legislative bodies

or library boards during official sessions or meetings, or litigation undertaken in courts of law with jurisdiction over the library and the library’s governing body.

Diversity in Collection Development

An Interpretation of the Library Bill of Rights

Collection development should reflect the philosophy inherent in Article II of the American Library Association’s *Library Bill of Rights*: “Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.”

Library collections must represent the diversity of people and ideas in our society. There are many complex facets to any issue, and many contexts in which issues may be expressed, discussed, or interpreted. Librarians have an obligation to select and support access to content on all subjects that meet, as closely as possible, the needs, interests, and abilities of all persons in the community the library serves.

Librarians have a professional responsibility to be inclusive in collection development and in the provision of inter-library loan. Access to all content legally obtainable should be assured to the user, and policies should not unjustly exclude content even if it is offensive to the librarian or the user. This includes content that reflect a diversity of issues, whether they be, for example, political, economic, religious, social, ethnic, or sexual. A balanced collection reflects a diversity of content, not an equality of numbers.

Collection development responsibilities include selecting content in different formats produced by independent, small and local producers as well as information resources from major producers and distributors. Content should represent the languages commonly used in the library’s service community and should include formats that meet the needs of users with disabilities. Collection development and the selection of content should be done according to professional standards and established selection and review procedures. Failure to select resources merely because they may be potentially controversial is censorship, as is withdrawing resources for the same reason.

Over time, individuals, groups, and entities have sought to limit the diversity of library collections. They cite a variety of reasons that include prejudicial language and ideas, political content, economic theory, social philosophies, religious beliefs, sexual content and expression, and other potentially controversial topics. Librarians have a professional responsibility to be fair, just, and equitable and to give all library users equal protection in guarding against violation of the library patron’s right to read, view, or listen to content protected by the First Amendment, no matter what the viewpoint of the author, creator, or selector. Librarians have an obligation to protect library collections from removal of content based on personal bias or

prejudice.

Intellectual freedom, the essence of equitable library services, provides for free access to all expressions of ideas through which any and all sides of a question, cause, or movement may be explored. Librarians must not permit their personal beliefs to influence collection development decisions.

Adopted July 14, 1982, by the ALA Council; amended January 10, 1990; July 2, 2008; and July 1, 2014.

Exhibit Spaces and Bulletin Boards

An Interpretation of the Library Bill of Rights

Libraries often provide exhibit spaces and bulletin boards in physical and/or electronic formats. The uses made of these spaces should conform to the American Library Association's *Library Bill of Rights*: Article I states, "Materials should not be excluded because of the origin, background, or views of those contributing to their creation." Article II states, "Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Article VI maintains that exhibit space should be made available "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use."

In developing library exhibits, staff members should endeavor to present a broad spectrum of opinion and a variety of viewpoints. Libraries should not shrink from developing exhibits because of controversial content or because of the beliefs or affiliations of those whose work is represented. Just as libraries do not endorse the viewpoints of those whose work is represented in their collections, libraries also do not endorse the beliefs or viewpoints of topics that may be the subject of library exhibits.

Exhibit areas often are made available for use by community groups. Libraries should formulate a written policy for the use of these exhibit areas to assure that space is provided on an equitable basis to all groups that request it. Written policies for exhibit space use should be stated in inclusive rather than exclusive terms. For example, a policy that the library's exhibit space is open "to organizations engaged in educational, cultural, intellectual, or charitable activities" is an inclusive statement of the limited uses of the exhibit space. This defined limitation would permit religious groups to use the exhibit space because they engage in intellectual activities, but would exclude most commercial uses of the exhibit space.

A publicly supported library may designate use of exhibit space for strictly library-related activities, provided that this limitation is viewpoint neutral and clearly defined.

Libraries may include in this policy rules regarding the time, place, and manner of use of the exhibit space, so long as the rules are content neutral and are applied in the same manner to all groups wishing to use the space. A library may wish to limit access to exhibit space to groups within the community served by the library. This practice is acceptable

provided that the same rules and regulations apply to everyone, and that exclusion is not made on the basis of the doctrinal, religious, or political beliefs of the potential users.

The library should not censor or remove an exhibit because some members of the community may disagree with its content. Those who object to the content of any exhibit held at the library should be able to submit their complaint and/or their own exhibit proposal to be judged according to the policies established by the library.

Libraries may wish to post a permanent notice near the exhibit area stating that the library does not advocate or endorse the viewpoints of exhibits or exhibitors.

Libraries that make bulletin boards available to public groups for posting notices of public interest should develop criteria for the use of these spaces based on the same considerations as those outlined above. Libraries may wish to develop criteria regarding the size of material to be displayed, the length of time materials may remain on the bulletin board, the frequency with which material may be posted for the same group, and the geographic area from which notices will be accepted.

Adopted July 2, 1991, by the ALA Council; amended June 30, 2004, and July 1, 2014.

Expurgation of Library Resources

An Interpretation of the Library Bill of Rights

Expurgating library resources is a violation of the American Library Association's *Library Bill of Rights*. Expurgation as defined by this Interpretation includes any deletion, excision, alteration, editing, or obliteration of any part of a library resource by administrators, employees, governing authorities, parent institutions (if any), or third party vendors when done for the purposes of censorship. Such action stands in violation of Articles I, II, and III of the *Library Bill of Rights*, which state that "Materials should not be excluded because of the origin, background, or views of those contributing to their creation," "Materials should not be proscribed or removed because of partisan or doctrinal disapproval," and "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment."

The act of expurgation denies access to the complete work and the entire spectrum of ideas that the work is intended to express. This is censorship. Expurgation based on the premise that certain portions of a work may be harmful to minors is equally a violation of the *Library Bill of Rights*.

Expurgation without permission from the rights holder may violate the copyright provisions of the United States Code.

The decision of rights holders to alter or expurgate future versions of a work does not impose a duty on librarians to alter or expurgate earlier versions of a work. Librarians should resist such requests in the interest of historical preservation and opposition to censorship. Furthermore,

librarians oppose expurgation of resources available through licensed collections. Expurgation of any library resource imposes a restriction, without regard to the rights and desires of all library users, by limiting access to ideas and information.

Adopted February 2, 1973, by the ALA Council; amended July 1, 1981; January 10, 1990; July 2, 2008; and July 1, 2014.

Intellectual Freedom Principles for Academic Libraries *An Interpretation of the Library Bill of Rights*

A strong intellectual freedom perspective is critical to the development of academic library collections, services, and instruction that dispassionately meets the education and research needs of a college or university community. The purpose of this statement is to outline how and where intellectual freedom principles fit into an academic library setting, thereby raising consciousness of the intellectual freedom context within which academic librarians work. The following principles should be reflected in all relevant library policy documents.

The general principles set forth in the *Library Bill of Rights* form an indispensable framework for building collections, services, and policies that serve the entire academic community.

The privacy of library users is and must be inviolable. Policies should be in place that maintain confidentiality of library borrowing records and of other information relating to personal use of library information and services.

The development of library collections in support of an institution's instruction and research programs should transcend the personal values of the selector. In the interests of research and learning, it is essential that collections contain materials representing a variety of perspectives on subjects that may be considered controversial.

Preservation and replacement efforts should ensure that balance in library materials is maintained and that controversial materials are not removed from the collections through theft, loss, mutilation, or normal wear and tear. There should be alertness to efforts by special interest groups to bias a collection through systematic theft or mutilation.

Licensing agreements should be consistent with the *Library Bill of Rights*, and should maximize access.

Open and unfiltered access to the Internet should be conveniently available to the academic community in a college or university library. Content filtering devices and content-based restrictions are a contradiction of the academic library mission to further research and learning through exposure to the broadest possible range of ideas and information. Such restrictions are a fundamental violation of intellectual freedom in academic libraries.

Freedom of information and of creative expression should be reflected in library exhibits and in all relevant

library policy documents.

Library meeting rooms, research carrels, exhibit spaces, and other facilities should be available to the academic community regardless of research being pursued or subject being discussed. Any restrictions made necessary because of limited availability of space should be based on need, as reflected in library policy, rather than on content of research or discussion.

Whenever possible, library services should be available without charge in order to encourage inquiry. Where charges are necessary, a free or low-cost alternative (e.g., downloading to disc rather than printing) should be available when possible.

A service philosophy should be promoted that affords equal access to information for all in the academic community with no discrimination on the basis of race, age, values, gender, sexual orientation, gender identity, cultural or ethnic background, physical, sensory, cognitive or learning disability, economic status, religious beliefs, or views.

A procedure ensuring due process should be in place to deal with requests by those within and outside the academic community for removal or addition of library resources, exhibits, or services.

It is recommended that this statement of principle be endorsed by appropriate institutional governing bodies, including the faculty senate or similar instrument of faculty governance.

Approved by ACRL Board of Directors: June 29, 1999 and adopted July 12, 2000, by the ALA Council; amended on July 1, 2014.

From a letter dated November 15, 2000, to Judith F. Krug, director, Office for Intellectual Freedom, from the American Association of University Professors:

A copy of the new ACRL/ALA statement on Intellectual Freedom Principles for Academic Libraries: An Interpretation of the "Library Bill of Rights" was forwarded to one of our Council members and considered by the AAUP Council in its meeting on November 11, 2000.

The AAUP Council is pleased to endorse the statement, but wishes to preface that endorsement with the following language from the Joint Statement on Faculty Status of College and University Librarians, as contained in AAUP: Policy Documents and Reports, 1995 edition:

"College and university librarians share the professional concerns of faculty members. Academic freedom, for example, is indispensable to librarians, because they are trustees of knowledge with the responsibility of ensuring the availability of information and ideas, no matter how controversial, so that teachers may freely teach and students may freely learn. Moreover, as members of the academic community, librarians should have latitude in the exercise of their professional judgment within the library, a share in shaping policy within the institution, and adequate opportunities for professional development and appropriate reward."

Please convey to the members of the ACRL Board and ALA Council our concern that college and university librarians are designated the same rights afforded to other faculty in regard to intellectual freedom.

Labeling and Rating Systems

An Interpretation of the Library Bill of Rights

Libraries do not advocate the ideas found in their collections or in resources accessible through the library. The presence of books and other resources in a library does not indicate endorsement of their contents by the library. Likewise, providing access to digital information does not indicate endorsement or approval of that information by the library. Labeling and rating systems present distinct challenges to these intellectual freedom principles.

Many organizations use or devise rating systems as a means of advising either their members or the general public regarding the organization's opinions of the contents and suitability or appropriate age for use of certain books, films, recordings, websites, games, or other materials. The adoption, enforcement, or endorsement of any of these rating systems by a library violates the American Library Association's *Library Bill of Rights* and may be unconstitutional. If enforcement of labeling or rating systems is mandated by law, the library should seek legal advice regarding the law's applicability to library operations.

Viewpoint-neutral directional labels are a convenience designed to save time. These are different in intent from attempts to prejudice or discourage users or restrict their access to resources. Labeling as an attempt to prejudice attitudes is a censor's tool. The American Library Association opposes labeling as a means of predisposing people's attitudes toward library resources.

Prejudicial labels are designed to restrict access, based on a value judgment that the content, language, or themes of the resource, or the background or views of the creator(s) of the resource, render it inappropriate or offensive for all or certain groups of users. The prejudicial label is used to warn, discourage, or prohibit users or certain groups of users from accessing the resource. Such labels sometimes are used to place materials in restricted locations where access depends on staff intervention.

Viewpoint-neutral directional aids facilitate access by making it easier for users to locate resources. Users may choose to consult or ignore the directional aids at their own discretion.

Directional aids can have the effect of prejudicial labels when their implementation becomes proscriptive rather than descriptive. When directional aids are used to forbid access or to suggest moral or doctrinal endorsement, the effect is the same as prejudicial labeling.

Libraries sometimes acquire resources that include ratings as part of their packaging. Librarians should not endorse the inclusion of such rating systems; however,

removing or destroying the ratings—if placed there by, or with permission of, the copyright holder—could constitute expurgation (see “Expurgation of Library Materials: An Interpretation of the *Library Bill of Rights*,” page 141). In addition, the inclusion of ratings on bibliographic records in library catalogs is a violation of the *Library Bill of Rights*.

Prejudicial labeling and ratings presuppose the existence of individuals or groups with wisdom to determine by authority what is appropriate or inappropriate for others. They presuppose that individuals must be directed in making up their minds about the ideas they examine. The fact that libraries do not advocate or use proscriptive labels and rating systems does not preclude them from answering questions about them. The American Library Association affirms the rights of individuals to form their own opinions about resources they choose to read or view.

Adopted July 13, 1951, by the ALA Council; amended June 25, 1971; July 1, 1981; June 26, 1990; January 19, 2005; July 15, 2009; July 1, 2014.

Minors and Internet Activity

An Interpretation of the Library Bill of Rights

The digital environment offers opportunities for accessing, creating, and sharing information. The rights of minors to retrieve, interact with, and create information posted on the Internet in schools and libraries are extensions of their First Amendment rights. (See also other Interpretations of the American Library Association's *Library Bill of Rights*, including “Access to Digital Information, Services, and Networks,” www.ala.org/advocacy/intfreedom/librarybill/interpretations/accessdigital, and “Access to Library Resources and Services for Minors.”)

Academic pursuits of minors can be strengthened with the use of interactive web tools, allowing young people to create documents and share them online; to upload pictures, videos, and graphic material; to revise public documents; and to add tags to online content to classify and organize information. Instances of inappropriate use of such academic tools should be addressed as individual behavior issues, not as justification for restricting or banning access to interactive technology. Schools and libraries should ensure that institutional environments offer opportunities for students to use interactive web tools constructively in their academic pursuits, as the benefits of shared learning are well documented.

Personal interactions of minors can be enhanced by social tools available through the Internet. Social networking websites allow the creation of online communities that feature an open exchange of information in various forms, such as images, videos, blog posts, and discussions about common interests.

Interactive web tools help children and young adults learn about and organize social, civic, and extra-curricular activities. Many interactive sites invite users to establish

online identities, share personal information, create Web content, and join social networks. Parents and guardians play a critical role in preparing their children for participation in online activity by communicating their personal family values and by monitoring their children's use of the Internet. Parents and guardians are responsible for what their children—and only *their* children—access on the Internet in libraries.

The use of interactive web tools poses two competing intellectual freedom issues—the protection of minors' privacy and the right of free speech. Some have expressed concerns regarding what they perceive to be an increased vulnerability of young people in the online environment when they use interactive sites to post personally identifiable information. In an effort to protect minors' privacy, adults sometimes restrict access to interactive web environments. Filters, for example, are sometimes used to restrict access by youth to interactive social networking tools, but at the same time deny minors' rights to free expression on the Internet. Prohibiting children and young adults from using social networking sites does not teach safe behavior and leaves youth without the necessary knowledge and skills to protect their privacy or engage in responsible speech. Instead of restricting or denying access to the Internet, librarians and teachers should educate minors to participate responsibly, ethically, and safely.

The First Amendment applies to speech created by minors on interactive sites. Use of these social networking sites in a school or library allows minors to access and create resources that fulfill their interests and needs for information, for social connection with peers, and for participation in a community of learners. Restricting expression and access to interactive web sites because the sites provide tools for sharing information with others violates the tenets of the *Library Bill of Rights*. It is the responsibility of librarians and educators to monitor threats to the intellectual freedom of minors and to advocate for extending access to interactive applications on the Internet.

As defenders of intellectual freedom and the First Amendment, libraries and librarians have a responsibility to offer unrestricted access to Internet interactivity in accordance with local, state, and federal laws, and to advocate for greater access where it is abridged. School and library professionals should work closely with young people to help them learn skills and attitudes that will prepare them to be responsible, effective and productive communicators in a free society.

Adopted July 15, 2009, by the ALA Council; amended on July 1, 2014.

Prisoners' Right to Read

An Interpretation to the Library Bill of Rights

The American Library Association asserts a compelling public interest in the preservation of intellectual freedom

for individuals of any age held in jails, prisons, detention facilities, juvenile facilities, immigration facilities, prison work camps and segregated units within any facility. As Supreme Court Justice Thurgood Marshall wrote in *Procunier v. Martinez* [416 U.S. 428 (1974)]:

When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor is his quest for self-realization concluded. If anything, the needs for identity and self-respect are more compelling in the dehumanizing prison environment.

Participation in a democratic society requires unfettered access to current social, political, economic, cultural, scientific, and religious information. Information and ideas available outside the prison are essential to prisoners for a successful transition to freedom. Learning to be free requires access to a wide range of knowledge, and suppression of ideas does not prepare the incarcerated of any age for life in a free society. Even those individuals that a lawful society chooses to imprison permanently deserve access to information, to literature, and to a window on the world. Censorship is a process of exclusion by which authority rejects specific points of view. That material contains unpopular views or even repugnant content does not provide justification for censorship. Unlike censorship, selection is a process of inclusion that involves the search for resources, regardless of format, that represent diversity and a broad spectrum of ideas. The correctional library collection should reflect the needs of its community.

Libraries and librarians serving individuals in correctional facilities may be required by federal, state, or local laws; administrative rules of parent agencies; or court decisions to prohibit material that instructs, incites, or advocates criminal action or bodily harm or is a violation of the law. Only those items that present an actual compelling and imminent risk to safety and security should be restricted. Although these limits restrict the range of resources available, the extent of limitation should be minimized by adherence to the American Library Association's *Library Bill of Rights* and its Interpretations.

These principles should guide all library services provided to prisoners:

Collection management should be governed by written policy, mutually agreed upon by librarians and correctional agency administrators, in accordance with the *Library Bill of Rights*, its Interpretations, and other ALA intellectual freedom documents.

Correctional libraries should have written procedures for addressing challenges to library resources, including a policy-based description of the disqualifying features, in accordance with "Challenged Resources" and other relevant

intellectual freedom documents.

Correctional librarians should select resources that reflect the demographic composition, information needs, interests, and diverse cultural values of the confined communities they serve.

Correctional librarians should be allowed to purchase resources that meet written selection criteria and provide for the multi-faceted needs of their populations without prior correctional agency review. They should be allowed to acquire resources from a wide range of sources in order to ensure a broad and diverse collection. Correctional librarians should not be limited to purchasing from a list of approved resources.

Age is not a reason for censorship. Incarcerated children and youth should have access to a wide range of library resources, as stated in "Access to Library Resources and Services for Minors" (see page 137).

Correctional librarians should make all reasonable efforts to provide sufficient resources to meet the information and recreational needs of prisoners who speak languages other than English.

Equitable access to information should be provided for persons with disabilities as outlined in "Services to People with Disabilities."

Media or materials with non-traditional bindings should not be prohibited unless they present an actual compelling and imminent risk to safety and security.

Resources with sexual content should not be banned unless they violate state and federal law.

Correctional libraries should provide access to computers and the Internet.

When free people, through judicial procedure, segregate some of their own, they incur the responsibility to provide humane treatment and essential rights. Among these is the right to read. The right to choose what to read is deeply important, and the suppression of ideas is fatal to a democratic society. The denial of the right to read, to write, and to think—to intellectual freedom—diminishes the human spirit of those segregated from society. Those who cherish their full freedom and rights should work to guarantee that the right to intellectual freedom is extended to all incarcerated individuals.

Adopted June 29, 2010, by the ALA Council; amended on July 1, 2014.

Privacy

An Interpretation of the Library Bill of Rights

INTRODUCTION

Privacy is essential to the exercise of free speech, free thought, and free association. The courts have established a First Amendment right to receive information in a publicly funded library.¹ Further, the courts have upheld the right to privacy based on the Bill of Rights of the U.S. Constitution.² Many states provide guarantees of privacy in their

constitutions and statute law.³ Numerous decisions in case law have defined and extended rights to privacy.⁴

In a library (physical or virtual), the right to privacy is the right to open inquiry without having the subject of one's interest examined or scrutinized by others. Confidentiality exists when a library is in possession of personally identifiable information about users and keeps that information private on their behalf.⁵ Confidentiality extends to "information sought or received and resources consulted, borrowed, acquired or transmitted" (ALA Code of Ethics), including, but not limited to: database search records, reference questions and interviews, circulation records, interlibrary loan records, information about materials downloaded or placed on "hold" or "reserve," and other personally identifiable information about uses of library materials, programs, facilities, or services.

Protecting user privacy and confidentiality has long been an integral part of the mission of libraries. The ALA has affirmed a right to privacy since 1939.⁶ Existing ALA policies affirm that confidentiality is crucial to freedom of inquiry.⁷ Rights to privacy and confidentiality also are implicit in the Library Bill of Rights' guarantee of free access to library resources for all users.⁸

RIGHTS OF LIBRARY USERS

The *Library Bill of Rights* affirms the ethical imperative to provide unrestricted access to information and to guard against impediments to open inquiry. Article IV states: "Libraries should cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas." When users recognize or fear that their privacy or confidentiality is compromised, true freedom of inquiry no longer exists.

In all areas of librarianship, best practice leaves the user in control of as many choices as possible. These include decisions about the selection of, access to, and use of information. Lack of privacy and confidentiality has a chilling effect on users' choices. All users have a right to be free from any unreasonable intrusion into or surveillance of their lawful library use.

Users have the right to be informed what policies and procedures govern the amount and retention of personally identifiable information, why that information is necessary for the library, and what the user can do to maintain his or her privacy. Library users expect and in many places have a legal right to have their information protected and kept private and confidential by anyone with direct or indirect access to that information. In addition, Article V of the *Library Bill of Rights* states: "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." This article precludes the use of profiling as a basis for any breach of privacy rights. Users have the right to use a library without any abridgement of privacy that may result from equating the subject of their inquiry with behavior.⁹

RESPONSIBILITIES IN LIBRARIES

The library profession has a long-standing commitment to an ethic of facilitating, not monitoring, access to information. This commitment is implemented locally through the adoption of and adherence to library privacy policies that are consistent with applicable federal, state, and local law.

Everyone (paid or unpaid) who provides governance, administration or service in libraries has a responsibility to maintain an environment respectful and protective of the privacy of all users. Users have the responsibility to respect each others' privacy.

For administrative purposes, librarians may establish appropriate time, place, and manner restrictions on the use of library resources.¹⁰ In keeping with this principle, the collection of personally identifiable information should only be a matter of routine or policy when necessary for the fulfillment of the mission of the library. Regardless of the technology used, everyone who collects or accesses personally identifiable information in any format has a legal and ethical obligation to protect confidentiality.

Libraries should not share personally identifiable user information with third parties or with vendors that provide resources and library services unless the library has obtained the permission of the user or has entered into a legal agreement with the vendor. Such agreements should stipulate that the library retains control of the information, that the information is confidential, and that it may not be used or shared except with the permission of the library.

Law enforcement agencies and officers may occasionally believe that library records contain information that would be helpful to the investigation of criminal activity. The American judicial system provides a mechanism for seeking release of such confidential records: a court order issued following a showing of good cause based on specific facts by a court of competent jurisdiction. Libraries should make such records available only in response to properly executed orders.

CONCLUSION

The American Library Association affirms that rights of privacy are necessary for intellectual freedom and are fundamental to the ethics and practice of librarianship.

Adopted June 19, 2002, by the ALA Council; amended on July 1, 2014.

Notes

1. Court opinions establishing a right to receive information in a public library include *Board of Education v. Pico*, 457 U.S. 853 (1982); *Kreimer v. Bureau of Police for the Town of Morristown*, 958 F.2d 1242 (3d Cir. 1992); and *Reno v. American Civil Liberties Union*, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997).
2. See in particular the Fourth Amendment's guarantee of "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," the Fifth Amendment's

guarantee against self-incrimination, and the Ninth Amendment's guarantee that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This right is explicit in Article Twelve of the Universal Declaration of Human Rights: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." See: www.unhcr.org/Overview/rights.html. This right has further been explicitly codified as Article Seventeen of the International Covenant on Civil and Political Rights, a legally binding international human rights agreement ratified by the United States on June 8, 1992. See: www.unhcr.ch/html/menu3/b/a_ccpr.htm.

3. Ten state constitutions guarantee a right of privacy or bar unreasonable intrusions into citizens' privacy. Forty-eight states protect the confidentiality of library users' records by law, and the attorneys general in the remaining two states have issued opinions recognizing the privacy of users' library records. See: State Privacy Laws.
4. Cases recognizing a right to privacy include: *NAACP v. Alabama*, 357 U.S. 449 (1958); *Griswold v. Connecticut* 381 U.S. 479 (1965); *Katz v. United States*, 389 U.S. 347 (1967); and *Stanley v. Georgia*, 394 U.S. 557 (1969). Congress recognized the right to privacy in the Privacy Act of 1974 and Amendments (5 USC Sec. 552a), which addresses the potential for government's violation of privacy through its collection of personal information. The Privacy Act's "Congressional Findings and Statement of Purpose" states in part: "the right to privacy is a personal and fundamental right protected by the Constitution of the United States." See: http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=5&sec=552a.
5. The phrase "personally identifiable information" was established in ALA policy in 1991. See: "Policy Concerning Confidentiality of Personally Identifiable Information about Library Users." Personally identifiable information can include many types of library records, including: information that the library requires an individual to provide in order to be eligible to use library services or borrow materials, information that identifies an individual as having requested or obtained specific materials or materials on a particular subject, and information that is provided by an individual to assist a library staff member to answer a specific question or provide information on a particular subject. Personally identifiable information does not include information that does not identify any individual and that is retained only for the purpose of studying or evaluating the use of a library and its materials and services. Personally identifiable information does include any data that can

link choices of taste, interest, or research with a specific individual.

6. Article Eleven of the Code of Ethics for Librarians (1939) asserted that "It is the librarian's obligation to treat as confidential any private information obtained through contact with library patrons." See: Code of Ethics for Librarians (1939). Article Three of the current Code (1995) states: "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired, or transmitted."
7. See these ALA policies: "Access for Children and Young People to Videotapes and Other Nonprint Formats"; "Free Access to Libraries for Minors"; "Freedom to Read" (<http://www.ala.org/alaorg/oif/freeread.html>); "Libraries: An American Value"; the newly revised "Library Principles for a Networked World"; "Policy Concerning Confidentiality of Personally Identifiable Information about Library Users"; "Policy on Confidentiality of Library Records"; "Suggested Procedures for Implementing Policy on the Confidentiality of Library Records."
8. Adopted June 18, 1948; amended February 2, 1961, and January 23, 1980; inclusion of "age" reaffirmed January 23, 1996, by the ALA Council.
9. Existing ALA policy asserts, in part, that: "The government's interest in library use reflects a dangerous and fallacious equation of what a person reads with what that person believes or how that person is likely to behave. Such a presumption can and does threaten the freedom of access to information." "Policy Concerning Confidentiality of Personally Identifiable Information about Library Users."
10. See: "Guidelines for the Development and Implementation of Policies, Regulations and Procedures Affecting Access to Library Materials, Services and Facilities."

Restricted Access to Library Materials

An Interpretation of the Library Bill of Rights

Libraries are a traditional forum for the open exchange of information. Restricting access to library materials violates the basic tenets of the American Library Association's *Library Bill of Rights*.

Some libraries block access to certain materials by placing physical or virtual barriers between the user and those materials. For example, materials are sometimes labeled for content or placed in a "locked case," "adults only," "restricted shelf," or "high-demand" collection. Access to certain materials is sometimes restricted to protect them from theft or mutilation, or because of statutory authority or institutional mandate.

In some libraries, access is restricted based on computerized reading management programs that assign reading levels to books and/or users and limit choices to titles on

the program's reading list. Titles not on the reading management list have been removed from the collection in some school libraries. Organizing collections by reading management program level, ability, grade, or age level is another example of restricted access. Even though the chronological age or grade level of users is not representative of their information needs or total reading abilities, users may feel inhibited from selecting resources located in areas that do not correspond to their assigned characteristics.

Physical restrictions and content filtering of library resources and services may generate psychological, service, or language skills barriers to access as well. Because restricted materials often deal with controversial, unusual, or sensitive subjects, having to ask a library worker for access to them may be embarrassing or inhibiting for patrons desiring access. Even when a title is listed in the catalog with a reference to its restricted status, a barrier is placed between the patron and the publication. (See also "Labeling and Rating Systems," page 143.) Because restricted materials often feature information that some people consider objectionable, potential library users may be predisposed to think of labeled and filtered resources as objectionable and be discouraged from asking for access to them.

Federal and some state statutes require libraries that accept specific types of federal and/or state funding to install content filters that limit access to Internet resources for minors and adults. Internet filters applied to Internet resources in some libraries may prevent users from finding targeted categories of information, much of which is constitutionally protected. The use of Internet filters must be addressed through library policies and procedures to ensure that users receive information and that filters do not prevent users from exercising their First Amendment rights. Users have the right to unfiltered access to constitutionally protected information. (See also "Access to Digital Information, Services, and Networks," www.ala.org/advocacy/intfreedom/librarybill/interpretations/accessdigital.)

Library policies that restrict access to resources for any reason must be carefully formulated and administered to ensure they do not violate established principles of intellectual freedom. This caution is reflected in ALA policies, such as "Evaluating Library Collections," "Free Access to Libraries for Minors," "Preservation Policy," and the ACRL "Code of Ethics for Special Collections Librarians."

Donated resources require special consideration. In keeping with the "Joint Statement on Access" of the American Library Association and Society of American Archivists, libraries should avoid accepting donor agreements or entering into contracts that impose permanent restrictions on special collections. As stated in the "Joint Statement on Access," it is the responsibility of a library with such collections "to make available original research materials in its possession on equal terms of access."

A primary goal of the library profession is to facilitate

access to all points of view on current and historical issues. All proposals for restricted access should be carefully scrutinized to ensure that the purpose is not to suppress a viewpoint or to place a barrier between users and content. Libraries must maintain policies and procedures that serve the diverse needs of their users and protect the First Amendment right to receive information.

Adopted February 2, 1973, by the ALA Council; amended July 1, 1981; July 3, 1991; July 12, 2000; June 30, 2004; January 28, 2009; and July 1, 2014.

The Universal Right to Free Expression

An Interpretation of the Library Bill of Rights

Freedom of expression is an inalienable human right and the foundation for self-government. Freedom of expression encompasses the freedoms of speech, press, religion, assembly, and association, and the corollary right to receive information without interference and without compromising personal privacy.

The American Library Association endorses this principle, which is also set forth in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly. The Preamble of this document states that “. . . recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. . .” and “. . . the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people. . .”

Article 12 of this document states:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 18 of this document states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

Article 20 states:

Everyone has the right to freedom of peaceful assembly and association.

No one may be compelled to belong to an association.

On December 18, 2013, the United Nations General Assembly adopted a resolution reaffirming that the right to personal privacy applies to the use of communications technology and digital records, and requiring the governments of member nations to “respect and protect” the privacy rights of individuals.

We affirm our belief that these are inalienable rights of every person, regardless of origin, age, background, or views. We embody our professional commitment to these principles in the *Library Bill of Rights* and Code of Ethics, as adopted by the American Library Association.

We maintain that these are universal principles and should be applied by libraries and librarians throughout the world. The American Library Association’s policy on International Relations reflects these objectives: “. . . to encourage the exchange, dissemination, and access to information and the unrestricted flow of library materials in all formats throughout the world.”

We know that censorship, ignorance, and manipulation are the tools of tyrants and profiteers. We support the principles of Net neutrality, transparency, and accountability. We maintain that both government and corporate efforts to suppress, manipulate, or intercept personal communications and search queries with minimal oversight or accountability, and without user consent, is oppressive and discriminatory. The technological ability of commercial and government interests to engage in the massive collection and aggregation of personally identifiable information without due process and transparency is an abuse of the public trust and inimical to privacy and free expression. We believe that everyone benefits when each individual is treated with respect, and ideas and information are freely shared, openly debated, and vigorously tested in the market of public experience.

The American Library Association is unswerving in its commitment to human rights, but cherishes a particular commitment to privacy and free expression; the two are inseparably linked and inextricably entwined with the professional practice of librarianship. We believe that the rights of privacy and free expression are not derived from any claim of political, racial, economic, or cultural hegemony. These rights are inherent in every individual. They cannot be surrendered or subordinated, nor can they be denied, by the decree of any government or corporate interest. True justice and equality depend upon the constant exercise of these rights.

We recognize the power of information and ideas to inspire justice, to restore freedom and dignity to the

exploited and oppressed, to change the hearts and minds of the oppressors, and to offer opportunities for a better life to all people.

Courageous people, in difficult and dangerous circumstances throughout human history, have demonstrated that freedom lives in the human heart and cries out for justice even in the face of threats, enslavement, imprisonment, torture, exile, and death. We draw inspiration from their example. They challenge us to remain steadfast in our most basic professional responsibility to promote and defend the rights of privacy and free expression.

There is no good censorship. Any effort to restrict free expression and the free flow of information through any media and regardless of frontiers aids discrimination and oppression. Fighting oppression with censorship is self-defeating. There is no meaningful freedom for the individual without personal privacy. A society that does not respect the privacy of the individual will be blind to the erosion of its rights and liberties.

Threats to the privacy and freedom of expression of any person anywhere are threats to the privacy and freedom of all people everywhere. Violations of these human rights have been recorded in virtually every country and society across the globe. Vigilance in protecting these rights is our best defense.

In response to these violations, we affirm these principles:

The American Library Association opposes any use of governmental prerogative that leads to intimidation of individuals that prevents them from exercising their rights to hold opinions without interference, and to seek, receive, and impart information and ideas. We urge libraries and librarians everywhere to resist such abuse of governmental power, and to support those against whom such governmental power has been employed.

The American Library Association condemns any governmental effort to involve libraries and librarians in restrictions on the right of any individual to hold opinions without interference, and to seek, receive, and impart information and ideas. Such restrictions, whether enforced by statutes or regulations, contractual stipulations, or voluntary agreements, pervert the function of the library and violate the professional responsibilities of librarians.

The American Library Association rejects censorship in any form. Any action that denies the inalienable human rights of individuals only damages the will to resist oppression, strengthens the hand of the oppressor, and undermines the cause of justice.

The American Library Association will not abrogate these principles. We believe that censorship corrupts the cause of justice, and contributes to the demise of freedom.

Adopted January 16, 1991, by the ALA Council; amended on July 1, 2014. □

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THE JUDITH F. KRUG MEMORIAL FUND

Banned Books Week: FTRF's Judith F. Krug Memorial Fund, created and supported by donations made in memory of FTRF's founding executive director, funds projects and programs that assure that her passion to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely will continue far into the future.

On May 27, via the Krug Fund, FTRF identified the recipients of seven \$1,000 grants for events celebrating Banned Books Week this fall:

- Nashua (N.H.) High School North
- Charleston (S.C.) Friends of the Library
- DePaul University Library and DePaul University Center for Writing-based Learning (Chicago)
- Columbus (Ohio) State Community College
- The Northern Virginia Fine Arts Association
- LGBT Center of Raleigh (N.C.) Library
- Greater Pittsburgh Chapter of the ACLU of Pennsylvania

The grantees' proposals for 2014, the fifth year of Krug Fund grants, feature programs addressing recent local challenges to books (Chicago and Charleston, S.C.); books that have disappeared completely (Alexandria, Va.); the connection between literacy and intellectual freedom (Nashua, N.H.); and content creation and interactivity (Columbus, Ohio).

As with past years, recipients will provide FTRF with photos, videos, and written reports of their events. For more information, please visit www.ftrf.org/?Krug_BBW.

Intellectual Freedom Education: The Krug Fund also provides funding for various initiatives to provide intellectual freedom curricula and training for LIS students. I am very pleased to report that FTRF has moved forward with one of these initiatives, partnering with the Graduate School of Library and Information Science (GSLIS) at the University of Illinois at Urbana-Champaign to offer an online graduate-level course on intellectual freedom for LIS students around the country. The course will be taught by GSLIS professor Emily Knox, who earned her Ph.D. from Rutgers University School of Communication and Information. Knox's scholarship, which encompasses intellectual freedom and censorship, print culture and reading practices, and information ethics and policy, has earned her the acclaim of other LIS academics.

The class, "Intellectual Freedom and Censorship," will be held August 26-October 10, 2014, and is open to any student enrolled in an LIS program. Those at Illinois and other institutions in the WISE consortium (www.wiseeducation).

org) can enroll via the WISE system. Students at non-WISE institutions can enroll by calling Tonyia Tidline, GSLIS director of professional development, at (217) 244-2945 or tidline@illinois.edu. For details, visit www.ftrf.org/?Krug_Education.

DEVELOPING ISSUES

The Foundation's Developing Issues Committee led a discussion about several emerging issues that could impact free speech, freedom of the press, and intellectual freedom in libraries and possibly give rise to future litigation. The first discussion addressed several intellectual freedom issues in arising at colleges and universities, including trigger warnings, state legislation in South Carolina and Michigan intended to restrict or chill instruction of disfavored courses and topics, and cancellation of commencement addresses as a result of public protest. The second discussion raised concerns about press freedoms and free speech in relation to state legislation intended to restrict online posting of arrest photos, "revenge porn," and videos and images depicting animal cruelty occurring on farms and other animal facilities. The third discussion addressed the issue of e-book privacy, and the final discussion reviewed the findings in the new report on filtering and the Children's Internet Protection Act issued by the Office for Information Technology Policy and the Office for Intellectual Freedom entitled "Fencing Out Knowledge: Impacts of the Children's Internet Protection Act Ten Years Later." That report is available at http://connect.ala.org/files/cipa_report.pdf.

2014 ROLL OF HONOR AWARD RECIPIENT HERBERT KRUG

It is my pleasure and privilege to introduce this year's recipient of the 2014 Freedom to Read Foundation Roll of Honor Award, Herbert Krug. Krug is a charter member of the Foundation who has provided immeasurable service to FTRF since 1969, and who is among the most generous donors in this organization's history. He has served two terms as FTRF's treasurer and is currently chair of the Membership and Fundraising Committee, where his expertise in direct marketing contributes to FTRF's successful fundraising and membership development efforts.

Krug's remarkable commitment to the Foundation's mission and his diligence and generosity in supporting that mission have contributed substantially to FTRF's success. We are delighted to now turn the spotlight on him and to honor him with the Roll of Honor Award.

2014 CONABLE CONFERENCE SCHOLARSHIP

I am also pleased to announce that FTRF has named John "Mack" Freeman as the seventh recipient of the Gordon M. Conable Conference Scholarship. Freeman works

at the Tifton-Tift County Public Library in Tifton, Georgia. He is very involved with the Gay, Lesbian, Bisexual, and Transgender Round Table of the ALA as a member of both their Web and News Committees and is incoming chair of the News Committee. Freeman also serves as a representative on the ALA Games and Gaming Round Table's Will Eisner Graphic Novel Growth Grant.

After earning his undergraduate degree, he spent a year as an AmeriCorps volunteer serving the students of an elementary school in the Watts neighborhood of Los Angeles. He then received his MLIS from Valdosta State University in December 2013.

Conable Scholarship Committee members were especially impressed by Freeman's concluding statement in his application essay: "IF issues are local, so the advocates for IF must also be. I want to acquire the skills that allow me to promote IF on a regional and national stage. Through this scholarship the Freedom to Read Foundation will provide me with the opportunity to look after the future of IF as both an advocate and future mentor."

The Conable Scholarship was created to honor the memory of former FTRF President Gordon Conable and to advance two principles that Conable held dear: intellectual freedom and mentorship. His unexpected death in 2005 inspired his wife, Irene Conable, and the FTRF Board to create the Conable Fund, which provided the means for Freeman to attend this conference and attend intellectual freedom meetings and programs here. He will prepare a formal report about his activities and experiences after the conference concludes.

FTRF MEMBERSHIP

Membership in the Freedom to Read Foundation allows the Foundation to continue to building our organizational capacity in order to support our litigation, education, and awareness campaigns. It is the critical foundation for FTRF's work defending First Amendment freedoms in the library and in the larger world. As always, I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries and other institutions become organizational members. Please send a check (\$35.00+ for personal members, \$100.00+ for organizations, and \$10.00+ for students) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at www.ftrf.org. □

get a drunken-driving arrest removed by calling it a youthful folly?

The burden of fulfilling the court's directives will fall largely on Google, which is by far the dominant search engine in Europe. It has more than 90 percent of the search business in France and Germany. Google said in a statement that the ruling was "disappointing" and that the company was "very surprised" it differed so much from a preliminary verdict last year that was largely in its favor.

The decision leaves many questions unanswered. Among them is whether information would be dropped only on Google sites in individual countries, or whether it would be also erased from Google.com. Even as Europe has largely erased its internal physical borders, the ruling could impose digital borders. Another open question is how much effort a search engine should reasonably spend investigating complaints.

"I expect the default action by search engines will be to take down information," said Orla Lynskey, a lecturer in law at the London School of Economics.

A trade group for information technology companies said the court's decision posed a threat to free expression. "This ruling opens the door to large-scale private censorship in Europe," said James Waterworth, the head of the Brussels office for the Computer and Communications Industry Association, which counts Facebook, Microsoft and Google among its members. "While the ruling likely means to offer protections, our concern is it could also be misused by politicians or others with something to hide."

That view was echoed by Big Brother Watch, a London-based civil liberties group that was perhaps the first to invoke the specter of Orwell.

"The principle that you have a right to be forgotten is a laudable one, but it was never intended to be a way for people to rewrite history," said Emma Carr, the organization's acting director.

Mayer-Schönberger, the author of *Delete: The Virtue of Forgetting in the Digital Age*, said such concerns were overblown. He said the court was simply affirming what had been standard European practice.

Relatively few people in Europe have had issues with wanting to delete information on the Internet, Mayer-Schönberger said. "I don't think this will lead to the end of the Internet as we know it."

Michael Fertik is chief executive of Reputation.com, which helps people improve their search results into something they find less objectionable. "For the first time, human dignity will get the same treatment online as copyright," Fertik said. "It will be protected under the law. That's a huge deal." The only loser, he said, was Google. "It no longer gets to profit from your misery." And perhaps Reputation.com. "This ruling is not necessarily favorable for my business," he said.

Those who worry that many people might use the ruling to erase information that is detrimental but is unquestionably accurate may find support in the case that began it. The case started in 2009 when Mario Costeja, a Spanish lawyer, complained that entering his name in Google led to legal notices dating to 1998 in an online version of a Spanish newspaper that detailed his debts and the forced sale of his property.

Costeja said the debt issues had been resolved many years earlier and were no longer relevant. So he asked the newspaper that had published the information, *La Vanguardia*, to remove the notices and Google to expunge the links. When they refused, Costeja complained to the Spanish Data Protection Agency that his rights to the protection of his personal data were being violated.

The Spanish authority ordered Google to remove the links in July 2010, but it did not impose any order on *La Vanguardia*. Google challenged the order, and the National High Court of Spain referred the case to the European court.

Costeja's lawyer, Joaquín Muñoz, said the ruling was a victory not only for his client, but for all Europeans. "The fundamental point is that consumers will now know what the rules of the game are and how to defend their rights," he said. Reported in: *New York Times*, May 13. □

intellectual freedom bibliography

Compiled by Nanette Perez, Program Officer, ALA Office for Intellectual Freedom

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