



PRIVACY, CONFIDENTIALITY, AND INTELLECTUAL FREEDOM IN THE LIBRARY

Margo Gustina

Southern Tier Library System

gustinam@stls.org



STLS

Southern Tier Library System

Connecting Community Libraries

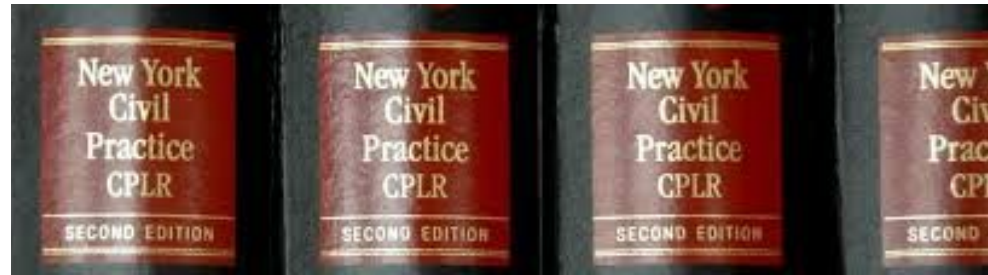
Eli Guinnee

Chautauqua-Cattaraugus Library System

eguinee@cclslib.org



THE FOUNDATIONS OF INTELLECTUAL FREEDOM



(DEMOCRACY SORT OF REQUIRES IT.)

FREEDOM IN THE LIBRARY IS

PRIVACY: Freedom from intrusion in personal matters.

CONFIDENTIALITY: Protects the information that has been shared with you.

INTELLECTUAL FREEDOM: The rights of library users to read, seek information, and speak freely as guaranteed by the First Amendment.

MOVE IT!

YES

Margo



NO

Eli

YES



NO

A parent of a 12 year old finds out that their child has a large fine and overdue books. She comes to the circulation desk and wants to know what the fines are for and what books are still overdue.

Would you give the parent the list?

YES



NO

What if the parent said that their child has been acting very funny lately and they are worried something bad is going to happen to the child?

Would you give the parent the list if they were worried about the child's health and safety (no overdue books/fines)?

YES



NO

What if it was a woman asking to pay her husband's
fines?

**Would you give the woman a receipt showing
which items she had paid for if she asked?**

Identifying details regarding the users of public, free association, school, college & university libraries & library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, **shall be confidential & shall not be disclosed** except that such records may be disclosed to the extent necessary for the proper operation of such library & shall be disclosed upon request or consent of the user or pursuant to a subpoena, court order, or where otherwise required by law.



YES



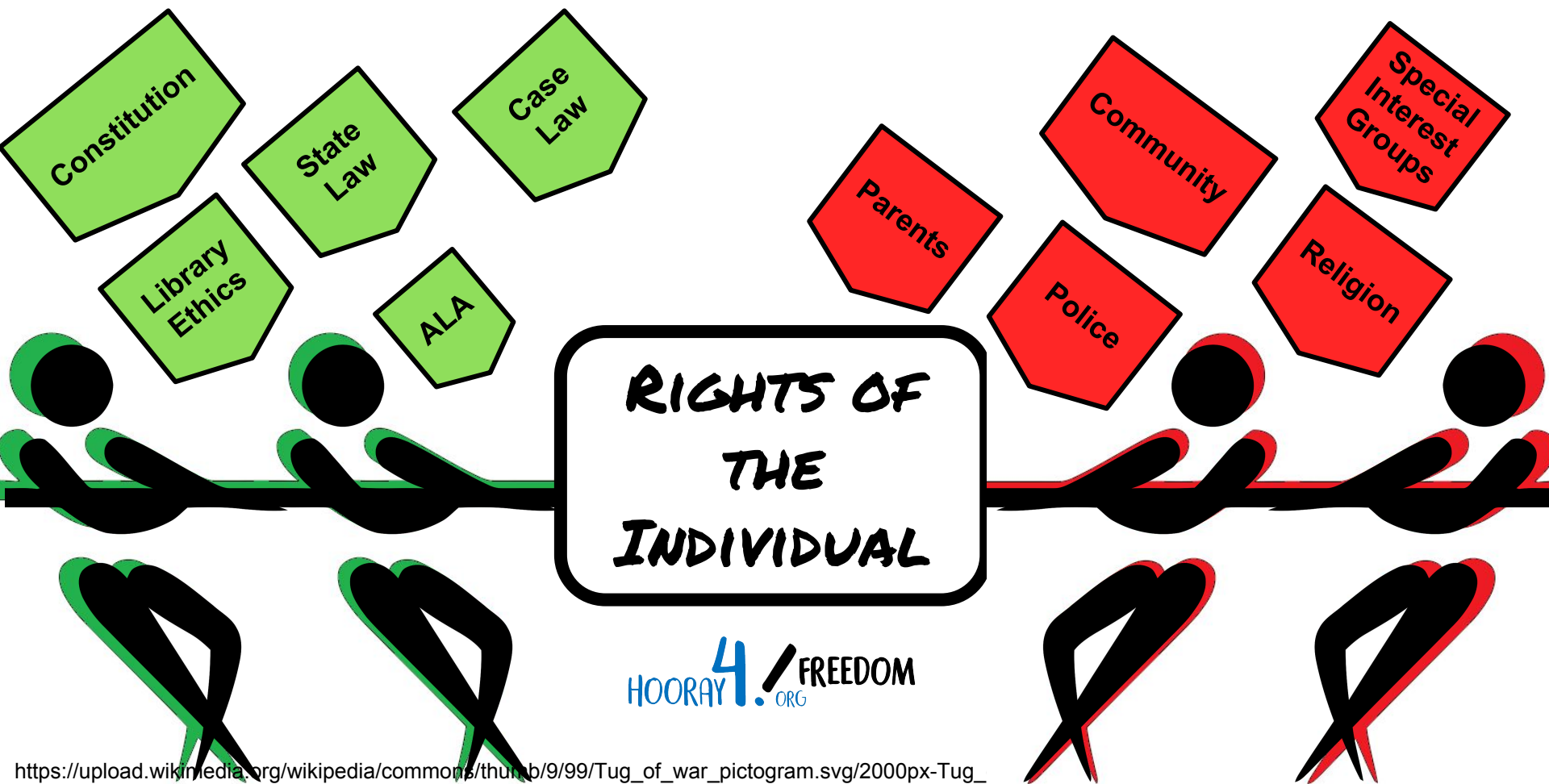
NO

A 10 year old wants to check out an R-rated DVD.

Would you let her?

*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 in the library. **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. 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 the appropriateness of materials for children and young adults.*

ALA



DEALING WITH GRAY AREAS

Turn Gray into Black & **White**
through
Structural Change
& Culture Building

All that is not gray

Keep Patron Records Confidential

- Circulation procedures should maximize privacy
- Don't store Internet and registration records
- Don't use them for non-circ unless you have an opt-in

Know How to Deal with Law Enforcement

- Have written procedures
- Train your staff and volunteers regularly

Develop Realistic Policies

- Follow your own policies
- Apply policies fairly to everyone
- Have a lawyer review them

Avoid Bad Situations

- Separate Children and Adult Computers
- Require agreement to policies before use

You Can't Act In Loco Parentis

- Educate parents
- Post your policies that affect minors

WHAT DO YOU DO?

10

minutes

WHAT DO YOU DO?

5

minutes

WHAT DO YOU DO?

2

minutes

WHAT DO YOU DO?

30

seconds

CASE STUDY—YOU WANNA USE IT FOR WHAT?

Roy is the director of the Futterman library, with a spacious public meeting room. A regular patron asks him to reserve the room for a Tuesday evening to host a meeting for her church. Roy, who knows that most of his board members disagree with the controversial views of the church, asks the patron for more information about the nature of the meeting. The patrons says it is intended to be a planning meeting for an upcoming church fundraiser and political action against another community organization, Planned Parenthood. Roy knows if he says yes his board will not be happy.

What is the difference between a public forum, a limited public forum, and a nonpublic forum?

CASE STUDY—YOU WANNA USE IT FOR WHAT?

- Do patrons have a right to use a space in the library for religiously affiliated activities?
- Should Roy have asked for more information about the nature of the meeting?
- What policies could the board have in place to support Roy in making Meeting Room decisions?
- What are some things Roy could do to start building a culture that supports intellectual freedom so that he wouldn't have to worry about what his board thinks?
- Extra Credit: What is the difference between a public forum, a limited public forum, and a nonpublic forum?

GUIDING PRINCIPLES:

Fit your **mission**.

Broaden access to protected speech.

Limitations must be unavoidable, **objective**,
and **evenly applied** across content areas.

PUBLIC FORUM vs. LIMITED PUBLIC FORUM vs. NONPUBLIC FORUM?

Public Forum: Traditional sidewalk corner. It is open for expressive activity.

Limited Public Forum: AKA designated public forum. Nonpublic property that has been designated as open, and as such cannot be restrictive of content. Courts have determined that public libraries are designated public forums. Religious groups can't be discounted.

<http://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/faithcenter.pdf>.

Nonpublic Forum: Property that is not open to public expression—eg. Staff meeting room. Courts determine this based on both policy and practice.

CASE STUDY—SKETCHY INTERNET ACTION

Sarah is the Director of the Pinevale Library. She gets a call from a mom saying that her 10 year old son saw someone looking at inappropriate pornographic content on the computer a couple days ago. By his description the mom knows it was Mr. Sutherland who is well known in the community and always on the library computers. She demands that Sarah take action to make sure it doesn't happen again.

Is there a legal distinction between what is considered pornographic, obscene, or indecent?

CASE STUDY—SKETCHY INTERNET ACTION

- What should Sarah say to the parent?
- Should Sarah say something to Mr. Sutherland?
- Do patrons have a right to view pornography?
- What could the library do in the future to protect the 10 year old from age-inappropriate material?
- Should the computers be keeping browser histories or keeping track of who uses the computers?
- Should Sarah look at the browser histories and to investigate the behavior of her patrons, specifically Mr. Sutherland?
- Would your answers be different if you knew that the website Mr. Sutherland was viewing was health related?
- What is one example of something the library could do to build a culture that respects patron privacy so that her conversation with the parent is easier
- Extra credit: Is there a legal distinction between what is considered pornographic, obscene, or indecent?

LEGAL DISTINCTION BETWEEN PORNOGRAPHIC, OBSCENE, INDECENT?

Pornographic: Writings, pictures, etc. intended primarily to arouse sexual desire. Is used to describe both obscene (unprotected speech) and indecent (protected speech).

Obscene: Includes 3 prongs: (1) an average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest (i.e., material having a tendency to excite lustful thoughts); (2) the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and (3) the material, taken as a whole, must lack serious literary, artistic, political, or scientific value. The Supreme Court has indicated that this test is designed to cover hard-core pornography.

Indecent: Indecent material contains sexual or excretory material that does not rise to the level of obscenity. For this reason, the courts have held that indecent material, including pornography (that is not marketed as containing minors, nor does it in actuality contain minors, and has not been judged obscene) is protected by the First Amendment and cannot be banned entirely. (<http://www.firstamendmentcenter.org/>)

MUST-HAVE POLICIES

to Support Intellectual Freedom

- ✓ Challenge to Library Materials
- ✓ Meeting Room / Bulletin Board / Display Case
- ✓ Internet / Wireless Use (Patron Behavior)
- ✓ Confidentiality of Patron Records
- ✓ Rights of Minors (Access to resources, Right to confidentiality, Patron Behavior, etc.)

HOORAY 4 CONTACTS!

hooray4.org/freedom

Margo Gustina

STLS

gustinam@stls.org

Eli Guinnee

CCLS

eginnee@cclslib.org

HOW CAN WE DO BETTER?

We want to get better at this. Please help us by filling out the feedback form. And if you have suggestions later, email us! We want your ideas!