

Intellectual Freedom Quick Reference

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.

Protected speech: The right to express or receive any opinion/perspective in public without censorship or restraint by the government, protected in the United States as a right under the First Amendment.

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

Limited Public Forum: Or 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 for the receipt of information. Library policy determines whether the space is open or closed to expression.

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

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; (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.

1st Amendment to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

4th Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects,[a] against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Statutes

CIPA

New York Patron Records Law - NY CPLR § 4509.

New York Subpoena Law - NY CPLR § 2307.

Case Law

Rights of Minors to access violent games- American Amusement Machine v. Kendrick 2001

Children cannot be shielded from violence.

Children's exposure to nudity- Erznoznik v. City of Jacksonville 1975

Offended viewer readily can avert their eyes. Government has no power to restrict expression for content.

Books cannot be censored for content- Board of Education v. Pico 1982

Boards cannot restrict the availability of books in libraries because its members disagree with the content.

A work is not obscene until deemed to be so by a court of law- Bantam Books, Inc. v. Sullivan (1963)

States cannot setup commissions to achieve the suppression of publications deemed "objectionable"

Defining obscenity- Miller v. California (1973)

Obscene materials do not enjoy 1st Amendment protection. The currently-binding precedent on the issue.

Policies and Procedures Development

Must-Have Policies

- Camera Surveillance:** Do not use where there is a reasonable expectation of privacy.
- Challenge of Library Materials:** Outlines procedures for staff to follow when material is challenged, including a form for the patron to fill out, steps for review, and notification of the patron.
- Confidentiality of Patron Records:** Affirms compliance with the New York State Civil Practice Law & Rules Section 4509: Confidentiality of Patron Records, Including Minors.
- Exhibit/Posting:** Policy should affirm First Amendment Rights of expression. It should be fairly and equally enforced. Post the policy near the exhibit space.
- Internet Use:** Review list of disallowed behaviors for legality. First amendment rights apply to the receipt of information (audio, image, text, video) via the internet.
- Law Enforcement Inquiry:** Procedures for staff approached by law enforcement requesting patron information, including with or without court order, warrant or subpoena.
- Meeting Space/Equipment:** Content blind, the use of the policy cannot favor one group over another.
- Patron Behavior/Code of Conduct:** Policies may not target a specific individual or group.

POLICY AND PROCEDURE GUIDANCE AND SAMPLES

Handbook for Library Trustees of New York State

Mid-Hudson Library System Policy Tips

Library Trustees Association

Hooray4.org/freedom/policies

ALA Guidance

ALA Intellectual Freedom Committee

Library Bill of Rights

Access to Library Resources and Services for Minors

Access to Resources and Services in the School Library Media Program

Filters and Filtering

Minors and Internet Activity

Privacy: An Interpretation of the Library Bill of Rights

Questions and Answers on Privacy and Confidentiality

Resolution on the Retention of Library Usage Records

Confidentiality and Coping with Law Enforcement Inquiries: Guidelines for the Library and its Staff

Full List of Resources: hooray4.org/freedom