

# Intellectual Freedom: Basic training for new staff and a refresher for the rest of us



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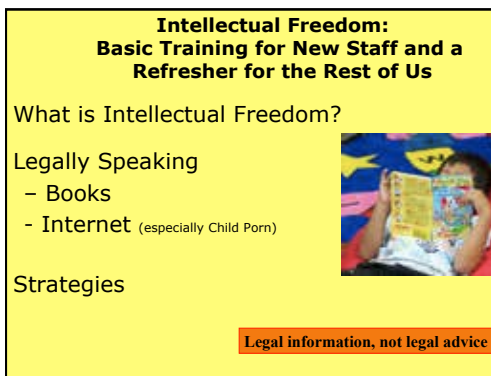
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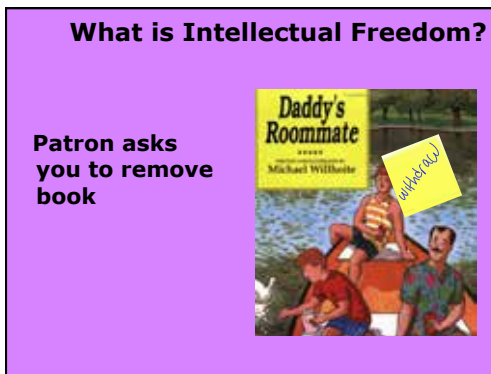
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1876  
American Library Association founded



Avoided controversial literature

Librarian as moral censor

Melvil Dewey

"only the best books on the best subjects were to be collected."

See *Defending Access with Confidence: A Practical Workshop on Intellectual Freedom* by Catherine Lord (ALA: 2005) <http://www.alastore.ala.org/detail.aspx?ID=286>

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**Personal v. Professional**  
**Code of Ethics**

We do not allow our personal beliefs to interfere with access to information.



Vegetarian librarian opposed to hamburgers

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**Legally Speaking**

Will Library Win in Court?



Library Restriction on Speech

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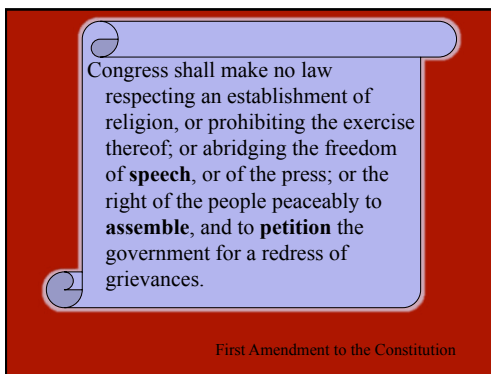
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First Amendment to the Constitution

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**Legal Framework**

**Constitution**

**Federal Law**

**State Laws**

Local laws

Library Policies

Where does ALA Code of Ethics fit in?

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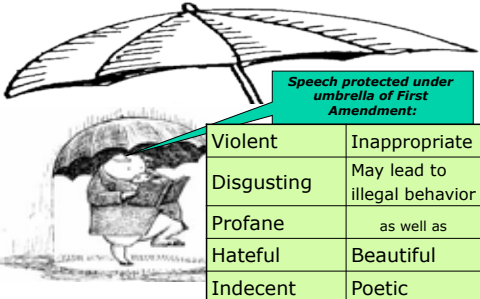
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**Legal Definitions**



Speech protected under umbrella of First Amendment:

Violent	Inappropriate
Disgusting	May lead to illegal behavior
Profane	as well as
Hateful	Beautiful
Indecent	Poetic

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BOOKS: Court Case: May a library remove books based on viewpoint?



Student sued when school board removed books as “anti-American, anti-Christian, anti-Semitic, and just plain filthy”

*Bd. of Ed. v. Pico*, 457 U.S. 853 (1982)

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# Intellectual Freedom: Basic training for new staff and a refresher for the rest of us

## No. U.S. Supreme Court



Schools in *loco parentis* and set curriculum, but cannot remove books unless educationally unsuitable or pervasively vulgar.  
Settlement: Books returned to shelves.

Bd. of Ed. v. Pico, 457 U.S. 853 (1982) is cited for this proposition. The decision was a plurality, not a majority. Lower court decisions citing it are controlling.

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## School Boards may consider vulgarity and educational suitability, but not merely the unorthodox ideas represented

Classrooms educationally suitable      School libraries      Public Libraries freewheeling



in between

Bd. of Ed. v. Pico, 457 U.S. 853 (1982)

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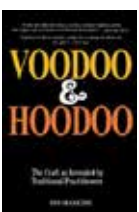
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## School Libraries Book Removal



Scholarly and practical look West African religions in U.S.

Spells to do ill  
Love Spells

**Court:** Deny access to ideas?  
If so, return to shelves

Campbell v. St. Tammany Parish School Board, 64 F.3d 184 (5th Cir. 1995)

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**School Board removes Annie**



novel about teenage lesbian relationship

*Case v. Unified School District No. 233, 908 F. Supp. 864 (D. Kan. 1995)*

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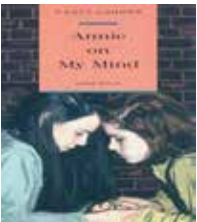
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**Court: Free Speech Violation**



**Removal not based on "educational suitability" but on ideology**

*Case v. Unified School District No. 233, 908 F. Supp. 864 (D. Kan. 1995)*

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**Public Library: Move books to adult shelves?**



City council:  
300 petitioners may demand children's books go to adult area



**Court:**

*Sund v. City of Wichita Falls, 121 F. Supp. 2d 530, (N.D. Tex. 2000)*

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**No. Patron's don't decide this.**



**Children and parents sued library.**



Books returned to children's area.  
Next group may want to move children's bibles away from kids.

*Sund v. City of Wichita Falls, 121 F. Supp. 2d 530, (N.D. Tex. 2000)*

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**May library require parent's permission to read Harry Potter?**



School board required parent's permission to read Harry.

*Counts v. Cedarville Sch. Dist. 295 F. Supp. 2d 996 (2003)*

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**No. Return to Open Shelves**



Court: too much burden, stigma for children

*Counts v. Cedarville Sch. Dist. (Ark.) 295 F. Supp. 2d 996 (2003)*

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**Vamos a CUBA** Ages 4 - 8

**May School Board Remove?**

"The people of Cuba eat, work and study like you"

**Complaint:** Nothing could be further from the truth. People of Cuba survive without civil liberties and due process.

*ACLU v. Miami-Dade County Sch. Bd., 557 F.3d 1177, 1200 (11th Cir.), cert. denied, 130 S. Ct. 659 (2009).*

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**Vamos a CUBA**

**COURT: YES**

Book was inaccurate.

*ACLU v. Miami-Dade County Sch. Bd., 557 F.3d 1177 (11th Cir.), cert. denied, 130 S. Ct. 659 (2009).*

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**Internet**

**Man looks at porn on the computer.**

**Another patron complains.**



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**Federal Law**

Children's Internet Protection Act (CIPA)



libraries with certain federal funds must block

child pornography,  
obscenity and material  
"harmful to minors"

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**Court: Law is Constitutional**

Upheld – only restricts c-o-h

...and (arguably) must disable on request by adult



<http://www.firstmonday.org/issue/firstmonday170/cgrap/ops/index.php/firstmonday170>

*United States v. American Library Association, 539 U.S. 194 (2003)*

[www.librarian.net/cipasigns.html](http://www.librarian.net/cipasigns.html)

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**U.S. Supreme Court**

**NOT PROTECTED under Umbrella of First Amendment**

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# Intellectual Freedom: Basic training for new staff and a refresher for the rest of us

**Library Policies MAY PROHIBIT:**

- Child Pornography
- Obscenity
- Harmful to Minors



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**Child Pornography**

Image of minor "sexually explicit conduct"

None at home  
No research purpose  
**DO NOT UNBLOCK!**



**Call Police**  
[Cybertipline.com](http://Cybertipline.com) or call 1-800-843-5678

CIPA cites 18 U.S.C. Sec. 2256; PROTECT ACT Signed into law April 30, 2003; See 18 U.S.C. §2256(B);

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**Obscenity**

- Average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest
- Work depicts in patently offensive way sexual conduct defined by state law ... **and**
- Taken as a whole *lacks serious* literary, artistic, political, or scientific value.

CIPA cites 18 U.S.C. § 1460; Courts likely to apply Miller v. California, 413 U.S. 15, 24 (1973). See also "Judicial Erosion of Protection for Defendants in Obscenity Prosecutions?: When Courts Say, Literally, Enough is Enough and When Internet Availability Does Not Mean Acceptance." Harvard Journal of Sports & Entertainment Law, (Spring 2010) <http://tinyurl.com/obscenityprosecutions>

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## Harmful to Minors

"harmful to minors" means any picture, image, graphic image file, or other visual depiction that-

- (A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
- (B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
- (C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

Children's Internet Protection Act (Pub. L. 106-554); see also *Mississippi Code of 1972, Annotated*, Section 97-5-27.

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## Harmful to Minors (part of CIPA) NEW to federal law

The term "image, graphic image file, or other visual depiction" means any picture, image, graphic image file, or other visual depiction that-

- (A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
- (B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
- (C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.



Children's Internet Protection Act (Pub. L. 106-554)

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## Libraries with E-Rate discounts and certain LSTA funds \*

Required to block or filter "visual depictions" CIPA images to block



	Adults	Children
Child Pornography	X	X
Obscenity	X	X
Harmful to Minors		X

\*for Internet service or internal connections. Also applies to libraries with LSTA grants for computers and direct costs to access the Internet.

CIPA cites 18 U.S.C. § 1460; Courts likely to apply *Miller v. California*, 413 U.S. 15, 24 (1973). See also "Judicial Erosion of Protection for Defendants in Obscenity Prosecutions": When Courts Say, Literally, Enough is Enough and When Internet Availability Does Not Mean Acceptance." *Harvard Journal of Sports & Entertainment Law*, (Spring 2010) <http://tinyurl.com/obsenityprosecutions>

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**Is Violence Harmful to Minors?**



Brown v Entertainment Merchants Association, (2011)

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**NO**

Supreme Court ruling:  
graphic violence is not  
"harmful to minors"



Brown v Entertainment Merchants Association, (2011)

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**Role of Parent**

Perhaps library may enforce parental prohibitions ...

May not require parental consent **prior** to allowing access



Based on dicta in Brown v Entertainment Merchants Association, 131 S.Ct. 2729 (2011)

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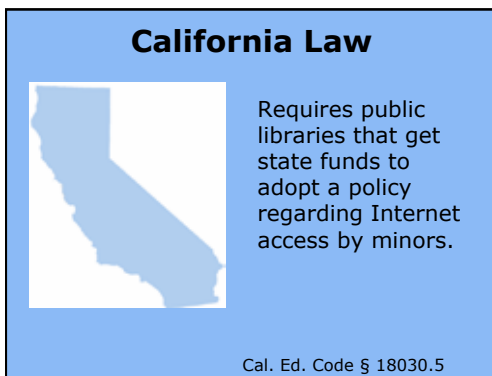
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## Community College

Student sued after he was detained for using Myspace in library

Internet Policy: "appropriate academic, professional and institutional purposes"



**Court:** Policy OVERBROAD

Revised Policy: "educational purposes by students"

Crosby v. South Orange County Community College Dist. (2009) 172 Cal. App. 4th 433

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## May Library Filter Hate Sites?

Not recommended.

CONSENT JUDGMENT: LIBRARY REMOVES HATE FILTERS



Libraries sued for blocking hate sites

Baum v. Maplewood City Library et al. - Consent Judgment Feb. 5, 2007 (libraries acknowledge filters restricting hate speech or content other than that proscribed by CIPA is a violation of First and Fourteenth Amendment rights)

http://tinyurl.com/hatefilters

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## Must libraries disable filters on request?

Second Amendment Foundation suing library in rural Washington state

\*originally blocked drugs, criminal skills, extreme, gambling, hate speech ...

\*no longer blocks *but*

still won't disable on request



47 U.S.C. § 2340(b)(1) (E-rate; disabling permitted for adults); 20 U.S.C. § 9134(f)(3) (disabling permitted without mention of age); Aron, Todd (Fall, 2005). Note: "Please Disable the Entire Filter": Why Non-Removable Filters on Public Library Computers Violate the First Amendment. 22 Texas Journal on Civil Liberties & Civil Rights 65. More Moore (April 5, 2004). Lawfully Surfing the Net: Disabling Public Library Internet Filters to Avoid More Lawsuits in the United States. First Monday. Firstmonday.org/issue/9\_4/more/. Strubum v. North Central Regional Library District (9th Cir. Supreme Court upheld library policy of no disabling) (more printing in federal court http://tinyurl.com/filterdisabling)

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**RULING:**  
**Washington Supreme Court**

WA Supreme Court:  
Collection development.  
No need to disable filters.

**Now in Federal Court**



Bradburn v. North Central Regional Library District, No. 82200-0, slip op. (Wash. May 6, 2010)  
<http://www.washingtoncourts.org/courtservices/electronicaccess/>; Bradburn v. North Central Regional Library District, Federal Court docket <http://dockets.justia.com/docket/washington/awdce/2-2005cc00127/61160/>

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**School Filters - Lawsuit**

PFLAG (gay and lesbian ) claims school filters pro-gay sites and does not filter anti-gay sites

Claims viewpoint discrimination



**NOW IN FEDERAL COURT**

Parents, Families, and Friends of Lesbians and Gays v. Camdenon R-III Sch. Dist.  
<http://dockets.justia.com/admin/missouri/mowdce/2-2011cv04212/100347/>

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**Hostile Work Environment?**

Library employees claim hostile work environment

and aggressive sexual comments and touching



**NOW IN FEDERAL COURT**

Wilson v. The Birmingham Public Library Foundation (pending)  
<http://dockets.justia.com/docket/alabama/alndce/2-2010cv02386/132842>  
Jackson v Birmingham, Alabama City (pending)  
<http://dockets.justia.com/docket/alabama/alndce/2-2011cv02632/138110/>

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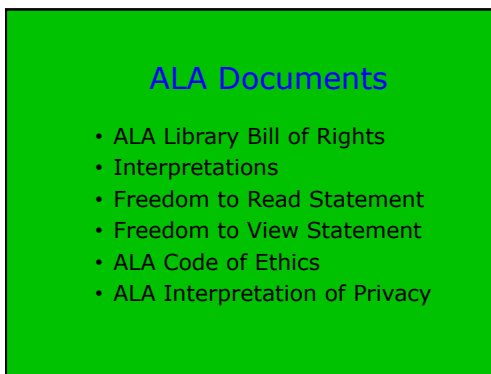
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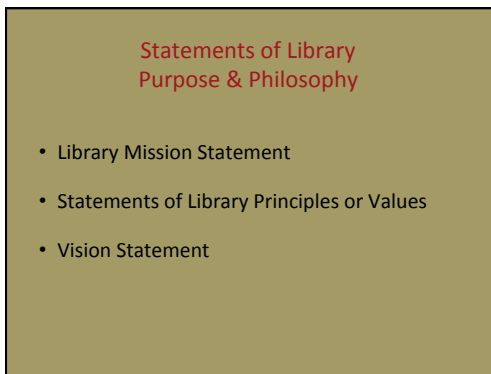
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## Collection & Access

- Materials Selection Policies
- Internet & Database Policies
- ALA Bill of Rights/Interpretations Specifically Adopted by Library
- Collection Maintenance & Weeding
- Requests for Reconsideration

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## Making a Referral

### WHEN

- It is not your job, *OR*
- If you are emotionally hooked

### HOW

- Listen
- Inquire: Would patron like to discuss further?
- Escort *OR* take name and phone number and tell patron who will be contacting them

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## Know Your Library's Policies, Procedures, & Forms

- Does your library have a written policy and procedure for handling complaints?
- Do you know where reconsideration forms are located? When to use?
- Do you fully understand all of the policies at your library that affect access?

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Remaining Calm...

What do *you* feel like doing when faced with a challenge?

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Fight?



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Flight?



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Professional Detachment:  
Alternative to Fight or Flight

- (1) Step back and breathe deeply
- (2) Remember: It's not about me
- (3) Remember: It's not about the person making a challenge
- (4) Actively listen

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Step Back and Breathe

Stepping back:

- Visualize an "out of body" experience
- Step outside of yourself

Remember to breathe

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Remember:  
It's Not About Me



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## Remember: It's Not About the Person Making the Challenge

- Refrain from judgment
- Appreciate that diversity of opinion is what libraries stand for—including patron opinions



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## Actively Listen

### SIGNS OF ACTIVE LISTENING

- Eye contact
- Attentive posture
- Paraphrasing for clarity
- Empathy

### HOW TO ACTIVELY LISTEN

- Put your own thoughts aside
- Care about what the other has to say

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## Satisfying the Unhappy Customer

- Turn "I can't" into "I can"  
*I can't limit your son to G-rated videos, but I can show you a great resource to help you and your son find age-appropriate videos.*
- Ask the customer what they want  
*Can you tell me what you'd like me to do?*
- Offer something  
*May I try to find a book that's better suited to your tastes?*
- Be willing to say "I'm sorry"  
*I'm really sorry it turned out that way for you.*

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Intellectual Freedom: Basic training for new staff and a refresher  
for the rest of us

Responding to Challenges:  
Strategy and Practice



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Take the Weight  
Off Your Shoulders

- Remember the detachment mindset
- Use techniques that are available to you to turn around an unhappy customer
- And you can use a five-point strategy for resolving complaints to

*make a heavy burden...*

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LIGHT Strategy for  
Resolving Challenges



**Listen:** Acknowledge patron concerns

**Inquire:** Would patron like to discuss it? What would (s)he like done?

**Give/Offer:** Policies, explanation, referral, "added value"

**Help** patron by stating what library *can* offer, and if patron is interested, provide a challenge form

**Thank** the patron for caring enough to express her or his own free speech

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# Intellectual Freedom: Basic training for new staff and a refresher for the rest of us

**Intellectual Freedom:  
Basic Training for New Staff and a  
Refresher for the Rest of Us**

What is Intellectual Freedom?

Legally Speaking

- Books
- Internet (especially Child Porn)

Strategies

**Thank you!**

**Questions?**

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# Intellectual Freedom: Basic training for new staff and a refresher for the rest of us

## Even More Credits





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Catherine Lord, *Defending Access with Confidence: A Practical Workshop on Intellectual Freedom* (ALA: 2005)  
<http://www.alastore.ala.org/detail.aspx?ID=286>

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