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Today's webinar is entitled Intellectual Freedom , basic training for new staff and a refresher for the rest of us presented by Mary Minow. Gary is a library law consultant working for 10 years in public ivory and end finds the intersection between legal sites fascinating. This webinar is partly based on the work by Kathryn [ Indiscernible Name ]. Published by the public Library Association and available through the ALH store. I am happy to introduce Mary Minow.

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Catherine told me she might be here. I would like to thank her for the work she has done. I have the information on her book in the credits light at the end of my show. What is Intellectual Freedom? First I was talk about the difference between Intellectual Freedom and intellectual property. Then the end -- move into the legal aspect. What is legally your obligation to make work available and what types of topics are not considered free speech under the U.S. Constitution? We will look at books and Internet. And court cases that help us to determine where the lines are drawn. Then we will move into strategies. That is where Catherine's work is helpful.

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What is intellectual see them -- freedom? It is one someone has the right to read whatever they want to read. In the library setting, where you will run into it, if you have not already. When a patron you to -- remove a book or two a different shelf of the children's area. Or in any way restrict access or put a burden on access to a book or other materials. Raise your hand if you have been asked to some way restrict materials in your library.

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The American Library Association has been a strong proponent of intellectual freedom. Intellectual Freedom and intellectual property are two different things. When I heard the term intellectual I was scared off because it sounds so intellectual. I wager that most of you have heard someone mixed the two terms up. Intellectual Property is the copyright . Intellectual Freedom is nothing to do with copyright. The right to read or view work for you from government prescription.

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Eileen, please tell us the results.

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Over 30.

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Thank you. I would be interested to hear some of your experiences. The American Library Association has such a strong voice today and was not always strong. In the early days avoided controversy literature. Do we even said the best books or subjects were to be collected. Today, the American Library Association has promulgated a call but -- code of ethics. One of the statements that we do not allow our personal beliefs to interfere with access to information. That can be very simple when it is something you agree with. Take for example, perhaps you agree that daddy's roommate should be in everyone's library area perhaps you do not. The real test of your mettle is one is something you find repugnant or against your values. Perhaps you agree or disagree there should be a cook look in the children's room that includes meat. Hamburgers. Or perhaps you find that repugnant. The real test is whether or not you can defend the book the matter what you personally believe.

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Legally speaking, the question is always whether or not, if a patron challenges you or your library. Whether you will win in court. When they are challenging you, when you have some kind of restriction on speech.

You have taken a book off the shelf. Moved it, labeled it. The question, whether the library wins in court whether you're rules will meet the legal test. The default, the patron will win unless you carefully follow the First Amendment and case line as to when and where you can make restrictions. Assuming the default of the patron will be able to win. The courts are very strong on free speech -- free speech rights. With some narrow exceptions. That goes back to the U.S. Constitution. In the First Amendment, Congress will make no law, bridging the freedom of speech. That has been carried over to a court decisions to states and local governments. Whenever the government and we are the government. Takes any kind of restriction on speech. That is subject to a lawsuit.

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We will look at the lawsuits and how they turned out. We are the government. We may not elect the government but if you are working for a public institution, then you are the government. If you happen to be tuning in and you work for a private library it is a different situation. With rare exception print since I am in California and many of you are also. I will go over what makes it a private institution.

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The legal framework at the very top is the Constitution. Free speech, First Amendment. Then, below that, a federal law for example the children's Internet protection act that restrict speech. Is that constitutional? Cut to the chase, the US Supreme Court says yes. Because of some very narrow restrictions in that law.

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The state laws below that and library policy. Where it does the code of ethics to him? -- Fit in? It is not part of the legal hierarchy. It is a professional association statement. However, if your library governing board has adopted it formally which many have. It becomes a library policy that is legally enforceable. The is part of the governing authority.

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The definitions of what is protected under the First Amendment. The broad umbrella includes violent speech, disgusting speech, for her fame, hateful, indecent or if that is the hard part. It protects the beautiful and poetic but it is the ugly, ugly speech that is also protected. The court has gone so far as to say, one man's trash is another man's treasure. One man's will guarantee is another man's lyrics. Even speech that is appropriate or leads to illegal behavior. Is protected under the umbrella of the First Amendment. The primary case that went to the US Supreme Court that guided many other cases.

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It is the Pico case. A case that went up before this court in 1982. The school board and members something to add library and removed books. Stephen Pico a high school senior sued the school. Essentially, I say it's actually because there was not a majority these vision. It was 4 justices agreed. They need five. It becomes murky. When it is -- there is a right for the students in the school libraries. Students have less rights than the same child who comes into a public library are presenting the public. Even rights in the school libraries to books such as the naked ape, go ask ask -- go ask Alice. These were removed because the school board called them anti-American, anti-Christian, anti-Semitic and [ Indiscernible Name ]. The question was whether the school board could remove them based on the viewpoint. The court said no. Even though the school is in local parenthesis and cannot set the content. They cannot remove a book from the school library unless it is educationally unsuitable or pervasively vulgar -- vulgar. There was a settlement in which the books were turned -- returned to the shelves.

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The school libraries are somewhere in between the classroom in which the school board set the curriculum. And besides what is suitable, educationally. The public library, which is a place of free will inquiry. To the US Supreme Court Stephen Pico decision. The school library is in between. The books can be removed if they are vulgar but they cannot be revoked based on the ideas. Not nearly the unorthodox ideas represented. How does that play out in more recent cases? Here's a 1995 case. This was a school library. The book movie

and Hindu. The west African religion in the US. They had spells at did a lot and -- that did ill. Was it removed to deny access to the ideas and if so it needed to return to the shelves. It did return to the shelves. The next case would be 1995. It was in a school. Annie on my mind. There are more school court cases than in the public world. Annie on my mind was a novel about a teenage relationship. A lesbian relationship. The court found that was a pre-speech violation to remove the book because of the removal was not based on educational suitability. Instead on ideology. The ideas presented within. That was -- in a school library -- that is going to be magnified in terms of the free speech wave in a public library. A school library can remove books based on educational suitability. Even then they could not remove Annie on my mind.

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Here is a public library case in which the city set up a rule that 300 members or people from the community could sign a petition to move children's books to the adult area. Not remove them from the library but move them from one shop to another. And the whole thing was daddy's roommate. What do you think was the court decision there? The court said patrons [ Indiscernible Name ]. That is the patron doesn't decide this. The books were returned I court order to the children's area. The court said the next group, if you leave it to the patrons to sign the petition, they could say we want to move the children's Bibles to the adult shelves. It is up to the professional judgment of the librarians to determine what goes on the shelves. Any time a book is taken off the shelf these on the ideas. It can invite a court review.

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Here is a 2003 case. Harry Potter. It was a -- not a removal entirely. It was a requirement by the school, children had to get their parents permission to read. Potter. Essentially behind the desk. School boards require the parents permission. A school child with their parents, sued the school. Again, the free-speech one. It was returned to the open shelf. I think this is a significant case. The court said it was too much of a burden to require the child to go home and get permission. Even if it was no problem for a particular child to get the peer permission it was too much of these, for the child to have to do that because they would be seeing Kerry and the book -- carrying around the book. It was too much of a stigma and it was open -- returned to the open shelf. That was in a school library. You can see the case of a public library, would be much stronger of a requirement to put it on the open shelf.

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All of those cases are a long march towards free-speech Intellectual Freedom , freedom to read. Until we get until 2009. We have the Florida school. Which removed [ Indiscernible Name ]. A children's picture book. That book has one line of text per page. Pictures of happy smiling children. People of Cuba, eat work and study like you. The person from the community who made the complaint. Nothing could be further from the truth. The people in Cuba survived without civil liberties and due process. It should be revoked from the shelves. The school board took it off the shelves and when they were sued, the court actually agreed with the school board. This is a real shift. In 2009 in the 11th Federal Circuit which covers Florida and nearby states. The court said it wasn't removed. It was removed because the book was inaccurate. In fact there was a page at the end where they had PT's and says -- paintings. The book was inaccurate. That is why it was removed. A lot of folks are inaccurate. It is a bit of a challenge to teach this case. Because in some ways it is inconsistent with. He is cases. That is where we are at right now. Now we move to the Internet.

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And born -- pornography. A man looking at photography I've the computer. What do you do. I am not going to ask you how many have had that situation. With 206 of you, I know you will have 206 people with Trent -- Raise your hand. The federal law was the children's protection act. Certain federal funds. Must black child pornography, obscenities and material considered harmful to minors. If you are one of those, you are required to block out COH. Child pornography, obscenity and harmful to minors. Is this challenge by the American Library Association. It went to the US Supreme Court and they said that is okay. You can make a law that restricts those three categories of speech. Those three categories are not protected under the umbrella of the

First Amendment. The young brother protect -- the umbrella protects profane. These are outside the protection of the first amendment. The only that, -- not only that but the library must disable the filter on request of an adult patron if it is blocking protected speech. We recognize filters are not precise. If that happens, the statute is constitutional because the patron can ask for the filter to be disabled.

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Again it was not a majority decision. Instead of having at least five votes out of the nine, it was for. A number of concurrences and descents. That is why I say on the slide, it is arguably must disable. I wrote a paper that you are welcome to read arguing the court, even in the conference. If you add a five votes, it still in dispute. There is a case going on right now in Washington disputing that interpretation. What is not protected, these three categories. COH. The library may prohibit those three categories. They are much more narrow legally then you might think just from the words. In a dictionary they are more broader than they are in the legal terms. The legal terms, child rocker feet on the minor has to be in a sexually explicit conduct. That is a very serious area. There is no right for someone to have it at home. No right to have it if you are doing research. If you are [ Indiscernible - low volume ]. Do not call the police. And/or depending on your library's policy. It is a very serious thing. You need to report it. Report it to the cyber tip line. Iraq mend call the police -- I recommend you call the police because it is a heinous crime. You will have horrible publicity if you do not. The definition of obscenity is very narrow. The average person has to apply contemporary community standards. Applied to the interests. Meaning it turns the person on. It is taken as a lack serious [ Indiscernible - poor audio ]. That is a national standard. You may come from a conservative community. And those values would be taken into account in the first two prongs. There is a national standard. If something is available nationally, without going to court. That is going to -- that is where the test is.

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All three prongs must be met. Very few websites, if any, have been found to be legally obscene. I have been trying for years to identify any that have been considered. One with -- the normal orgy -- raunchy stuff is not going to come near that. The main point I want you to take away from this webinar. It has to do with sex when it comes to harmful to minors. The only part in federal law is the notion that harmful fibers -- minors is throughout the state.

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The libraries that are required to block or filter visual depictions of those three categories. It is why the US Supreme Court said it was okay. These three categories are outside the umbrella of free speech. As for adults, the library is required to block child pornography and obscenity. As for children those two categories plus materials harmful to minors. It is only visual depictions and not written words.

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The recent case that was asked to expand the definition. Into violence. The Brown versus entertainment merchants Association. A case in which violent video games in California required to be labeled and restricted to children. The justification was, violence was harmful to minors. The US Supreme Court said no. Harmful to minors is a fairly narrowly defined. It is about sex and pornography. It is not about violence. Graphic violence is not legally harmful to minors. Do not in your libraries, I do not advice that you block materials like that. Although it you will see that there is still an open issue and is pending court case on that ground. At the US Supreme Court level, they have said children have the right to violent speech as much as an adult.

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The same case gave us, in a footnote. It is not part of the main ruling. It is interesting. What the role of a parent is. Can a parent require the government to restrict their children if the parent wants it. This is what it said. Perhaps a library they enforce a parental request to restrict their own kids. The library may not require parental consent prior to access. Let me put that into English.

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If a parent says, I don't want my kid to have R-rated videos. It is possible the library could enforce that for that kid. If the library on its own said I am not going to let -- let kids look at R-rated videos unless the parent says it is okay. That is not permissible. Perhaps you can enforce a parent own wishes. You may not force wishes with restrictions on a kid pending their parents permission. Which goes a long with the Harry Potter case. You can look up your state law. A good place to go is NCSL. National conference of State legislatures.

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California law. Has a simple law that requires the public library to get state funds to adopt a policy. Regarding Internet access by minors. It just says you have to have a policy. This came out a long time ago. Your library probably has already done this. If not, you might want to check on that.

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Here is an interesting thing about California. Even in a private college and high school. There are free speech rights. That is possible because the state law says that. Students who are in public and private colleges. Have the same free speech rights as students who are just and a public [ Indiscernible Name ]. That is unusual. It is the only state I am aware of that does that. There was a case in 2009 that explains this. A case where a student in a community college was using MySpace. He was detained and told he was not supposed to be using MySpace in the library. The Internet policy was -- it had to be appropriate, academic and institutional purposes. The student sued the library. And it was found in the favor of the students. Students have the right in California community colleges to use MySpace. It was considered to be overbroad. Appropriate purposes. Who decides that? One thing courts do not like, standard list discretion by public officials. They don't want the libraries deciding today, tomorrow. Different people having different standards. They don't like that. The policy was overbroad. A revised the policy to say educational purposes. They were able to say, some limits but it had to be educational purposes and not appropriate purposes. It is more narrow.

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Other cases of interest. This was a library in Missouri that had filter hate sites. Public libraries. They were sued by groups that said you are filtering our site and we don't consider ourselves hate sites. Others might consider that but we have a right to free speech and you should not be blocking our speech to people who want to read about us in your library. They did not get to a judge decision that there was a consent judgment. In fact the library moved -- we moved to hate filters. Which was really the right thing to do. Hate speech is free speech in the US. Not true in all countries of the world. Canada, France or Germany. In the US, hate speech is protected.

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Here is a case that is still pending. Must the libraries disable a filter on request? There are two ways to look at this. The US supreme court decision was not a majority decision. I read that to say, yes they must. But it is in the state of Washington. The Second Amendment foundation is suing at library in Washington state. That plot all kinds of sites. Drugs, hate speech, gambling. They shifted their practices the laundry -- no longer blocking those. They would remove the blocks but not necessarily instantly. The court record shows how long it took them upon request. If there is how long it takes to unblock a site. The Washington we -- supreme court ruled on the case. They have a very different view than many in the library communities. Clearly the library community is mixed because this is a library that took the action. The Washington Supreme Court said it is a collection development decision. No need to disable the filters. Now it is still pending because it is in federal court. It is a case to watch. Another case to watch is in federal court in Missouri.

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A school has filters that claim the school filters Pro-Gay but not anti-gay. If you studied the First Amendment law. It is a very high burden to justify. It will almost always be a loser if the government restricts base on viewpoints. We'll see how that turns out.

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Is it a hostile work environment if someone is doing pornography? There was a file complaint with the

EEOC. In that case there was a settlement with the library and who filed the complaint and the library was required to pay them quite a bit of money. In that case, there was a lot of behavior as well as speech. It was not just the fewer free speech case. -- Pure free-speech case. There are some pending now where the library staff said there was a hostile work environment. Including touching. These are end all of them. The issue -- these are in Alabama.

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The issue is that there is no action but just displaying. It is not likely to if it is just display. I have looked at cases in other workplaces. Just display does not rise to the case. This is not that he is the public rather than employees. Not as controllable by supervisors and it makes it difficult. We will have to wait and see. Moving onto strategies.

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There are documents that are good resources. There are a series of interpretations. We have the ALA code of ethics . ALA interpretation of privacy. Look in your home library. They probably have a mission statement. Those will help guide your library in the intellectual freedom area. It is good to know before you get a challenge. If you're working at the front reference desk. What materials selection policies your library has. Whether or not the ALA Bill of Rights and interpretations have been adopted by your library. That makes your -- then legally effective. Whether your library has a form of request for reconsideration. It is something you need to know if you have. And takeout if necessary. My advice, based on a lot of people who have dealt with challenges over the years. Do not pull it out right away. Let the person talk it through first. If needed, then taken out.

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When do you make a referral? If it is not your job, someone about you. In most cases it is a serious issue. You want to refer it up. Let's say you are emotionally hooked in. I noticed not -- that truck and Eileen play -- Chuck and Eileen play mellow music at the beginning. It is easy to get emotionally involved. We will give you some tips to help calm you. You want to listen, inquire. But the patrons discuss it further. Take their name and phone number and tell them someone will contact them. Know your libraries policies procedures and forms. Do you have a procedure to file complaints? Do you know where they are located?

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Do you understand the policies requiring access? Remain calm. What do you feel like doing when you're faced with a challenge? I would like to hear. Do you want to fight or flight? Those are natural responses. Here is the trick. Professional detachment. An alternative to fight or flight. Step back, breathe deeply. Remember, it is not about me. It is not. It is not even about the person making the challenge. Actively listen. To the content of this talent -- challenge. Visualize and out of body experience. Step outside. Remember to breathe.

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I just saw seasons chat. Always explain we serve the needs of the entire community and provide materials to reflect that. Thank you, Susan. It is not about me. It is not about the person making the challenge. Refrain from judgment. Appreciate diversity in the community. That is what libraries stand for. Here is in the -- here is active listening. Care about what the person has to say. But I contact. Have an attentive Oster. Paraphrase. - - Have an attentive posture and paraphrase.

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Turn I can't into I can. Ask the customer what they want. Can you tell me what you would like me to do? Offer something. They I try to find a book that are suited to your tastes? Be willing to say I'm sorry it turned out that way for you. I would not apologize to the libraries policy but I'm sorry you are having a bad experience with that. How would you respond to challenges? Here are strategies. Take the weight off of your shoulders. Remember the detachment mindset. Use techniques available to turn around an unhappy customer. Here is a five-point strategy for resolving complaints. The right strategy. It takes the heavy burden and makes

it light.

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This is very good. Listen, inquire, give, help and thanks. Acknowledge patrons concerned. What would he or she like to have done? Give, meaning give some of the policies. Hopefully you have something to hand out. Give an explanation, a referral and value. Help the preaching I saying the library can offer -- help the patron with what you can offer. You may not want to do that right away. Thank you. It is time for questions. I will show some credits. We have some photos from creative Commons.

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That they see what questions you have. -- Let me see what questions you have.

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A book of Westerns photos. Even though some sexual material is outside of the umbrella of free-speech. Nudity. It is not considered harmful to minors event. It has to have sexual activity or content. That was interesting about that Edward was turned complaint. -- Edward Western complaint. The verbal conversations. You're more likely to have verbal. We had one and I would be interested to hear how it turned out. You need to have them and the process after the form. The person in charge was likely to respond.

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ALA has a lot of good information on handling challenges. It can go up to the board level to hear the hearing. That is a very rare instance that it gets that far.

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The caveat for the removal of the [ Indiscernible Name ] filter. That language is from the lot itself. -- Law itself. When it was heard before the US Supreme Court, the lawyer for the US, said they don't have to show bona fide research. All they have to do is ask. The US supreme court accepted that. It is still telling which of the law. Other lawful purposes, it is pretty broad. That means, anything, except for those three categories, COH. They could be using the Internet for unlawful reasons. To send threats, gamble any place where it is not legal.

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That is going to be a tough one to identify. Bona fide research or other purpose.

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Is the Supreme Court say it is up to librarians to prevent kids from checking out R-rated movies if the parents request? No. In a footnote, it is possible to be okay for the library to honor a parents request. It is absolutely - it is not up for the library to prevent the kid to check out and R-rated video.

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Will we have access to your PowerPoint? Yes. You can also listen to it again and also download the PowerPoint.

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The light approach looks good. Yes, that is Catherine.

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To clarify. On a national level there is no law to support libraries restricting either -- R-rated films even though they could not be able to buy tickets to the movie in the theater. It is actually fairly clear. Libraries cannot restrict R-rated films from children. The possibility would be if the parent asked to restrict it for their child as we just talked about. The difference between a movie theater, they are private. They choose to not show R-rated films to children. So that they can continue to get distribution from movie distributors. That is a private system. A private rating system. There have been cases where cities have tried to institute it and it gets knocked out because we are the government. The government cannot enforce a private reading that goes beyond the three categories of speech. COH.

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With pornography involving adults. To respond if there is not [ Indiscernible - low volume ]. You need to

have a policy. The courts will not look kindly on. If you don't have a policy and different members of the staff handled the same type of situation differently. You have to treat all members of the public the same. That is the starting point.

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If a child were to see you. They would have to have a. Help them. We have that in the Harry Potter case. You have to have the right person to sue. It could be a problem we have a policy that says if an action prevent another user from using the library comfortably. They can be consider -- considered bad behavior. That is tricky. If it is just speak. I would hesitate to have such a policy. If there is any actual behavior such as crossover of being scared or hand movement inside their pants etc. Absolutely. If it is pure speech it would be problematic.

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Illegal behavior is protected. You may know this. The group mambla. It is the group of men who advocate sex with young boys. Liberating their sexual inhibitor. The speech itself is fine. If they were to go into the children's room and solicit to the boys, that would clearly be illegal. There is a difference between speech that may lead to illegal behavior. And advocating. They can also add okay. It crosses over -- it is okay to add okay. It crosses over when they solicit.

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If it doesn't have anything to do with the content of the DVD. It is okay. There may be a child that says that is not fair etc. But you're not basing it on contents.

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I am talking about the course. It is not okay with ALA. The Library Bill of Rights. That is the difference between the professional and the legal rights of the children. If your library has adopted the Library Bill of Rights, it could be a problem. Dickie. Our library use [ Indiscernible - poor audio ].

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One thing. I am glad to bring up now. You are welcome at any time to call the ALA office for intellectual freedom for their wealth of advice. The most important thing that they will tell you. Is to have a process in place so you have the unimpeded new -- they have an avenue to make the complaint and be heard. Follow your own process. That is the next step.

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What about sexually graphic pictures on adult material shells. -- Shell less -- shelves. That is harmful to minors. Essentially graphic features. -- Pictures. Even if it is very sexually explicit. If there is a scientific value. Such has a sexual education book. If there is any sort of serious value, it is not harmful to minors.

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Our library limits video check out to people 18 years old and older. That sounds fine because it sounds content neutral. The second sentinels -- sentence. Privilege to certain videos is more problematic. I would go with all or nothing. The --

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You could say that it is the label. Pvt. label.

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They do not have the right to display it where children maybe occupied. -- Walking I by --.

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R-rated movies are industry ratings. It is okay for credit movie houses to enforce that. It becomes more problematic if the government enforces a private industry ratings unless they are trying to fit the three categories of speech. That is something you might want to revisit.

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We are at the end of our time. Thank you all for coming.

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Challenges come from all directions. It is every group. The issue to uphold patrons rights to read whatever they want. They may be reading it to educate themselves how horrible the view is.

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Thank you.

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[ Event Concluded ]