



Intellectual Freedom: Basic training for new staff and a refresher 02/15/15  
for the rest of us

Introduction to Intellectual Freedom for Libraries 2015 Update

Presented by Mary Minow  
J.D., A.M.L.S

 LibraryLaw.com

Tuesday, February 17, 2015

 Infopeople *helping libraries think differently*

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Library shelves

- Books (schools and public libraries)
- Internet

Responding to challenges

- American Library Association

Social Media update

- Public and staff postings

**Legal information, not legal advice**

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**Books and physical materials**



A parent asks you to remove a book from the shelf because she feels it could harm her children.

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### Who decides?



Your library has too many liberal magazines and not enough conservative ones!

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### Selection v. Removal



Librarian doesn't buy book or magazine  
No judicial review

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### Selection v. Removal



Removal by the government  
may invite judicial review

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### Selection v. Removal



Removal by the government  
may invite judicial review

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### Who Decides What Goes in Library Collection?



**Author**



**INFORMATION Librarians**



**Library Board**



**Legislator**



**Judge**

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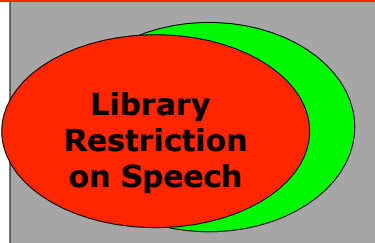
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### Law, Cases Question is Always Will Library Win in Court?

Rules and Regulations



Library Restriction on Speech

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**Or will Patron win?**

Rules and Regulations

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**Legal Definitions**

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

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**Court Case: Can a library legally 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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**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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**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.

Public library, place of free-wheeling inquiry, put the books on display

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 do NOT have unrestricted authority  
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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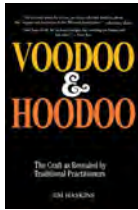
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### School Libraries Book Removal



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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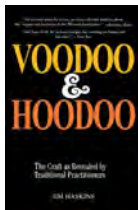
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### Court Looks at Board's Motivation



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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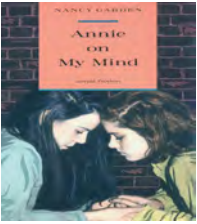
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**Court:  
Violation of First Amendment**



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



**Children and parents sued library.**

**Court:**

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



School board required parent's permission to read Harry.

Student sued.

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

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



School board required parent's permission to read Harry.

Student sued.

**Court:** No. Return to open shelves. Otherwise, too much burden, stigma for children

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

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**Who Decides What Goes in Library Collection?**



**INFORMATION**

**Librarians Select and Weed**

**Library Board**  
Vote to remove book

**Chief Justice John Roberts**

**First Amendment**  
**Schools** – may remove if educationally unsuitable  
**Public Libraries** – may remove if unprotected by First Amendment

**Legislator**  
Ties funding to policies

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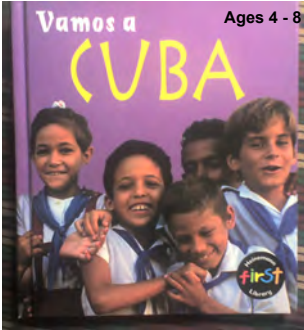
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Intellectual Freedom: Basic training for new staff and a refresher 02/15/15  
for the rest of us

Vamos a **CUBA** Ages 4 - 8



Parents wanted removal from school library

*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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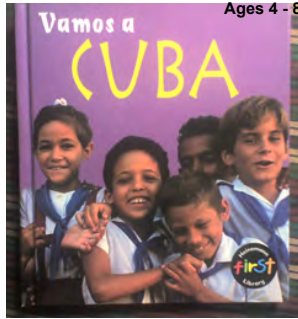
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Vamos a **CUBA** Ages 4 - 8



"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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**School Library Book (Miami, FL)**

Vamos a **CUBA** Ages 4 - 8



**COURT:**

School board may remove book based on inaccuracies.

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

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**Picture book**



Parents complained book  
“normalizes a lifestyle we don’t agree with”

School district behind counter  
Said “advocacy of homosexuality,”  
violated Utah sex education laws

*AW v Davis School Dist. filed Nov. 13, 2012*

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**Picture book**



Settled 2013.

School District agreed to return  
to regular circulation.

Book may be restricted per-  
student at the request of parent  
(like any book)

*AW v Davis School Dist. settled and dismissed Feb. 4, 2013 1:2012cv00242*  
<http://dockets.justia.com/docket/utah/utdce/1:2012cv00242/86877>

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**Internet**



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

**Another patron  
complains.**

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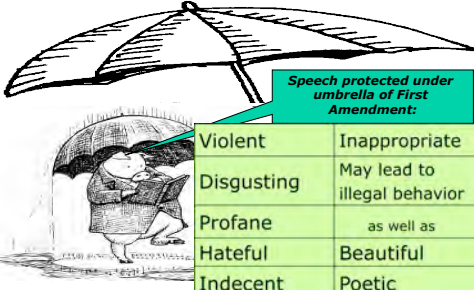
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**Legal Definitions**



*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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**Early lawsuit: Parent sues Livermore**

Premises liability  
Public nuisance  
Public funds waste  
... and Constitutional Duty to Protect child



Parent, Kathleen R. sued Livermore son downloaded pornography at the library

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**Library Won**

Possible s  
Premis  
Public  
Public

Possible f  
Protec



**Library immune from suit  
No duty to protect child  
(federal grounds)**

California: *Kathleen R. v. City of Livermore*,  
87 Cal. App. 4th 684 (2001)

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### Children's Internet Protection Act (CIPA)

...requires schools and libraries with specific federal funds\* to block

- child pornography
- obscenity
- harmful to minors



\*erate discounts and LSTA funds for internet access

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### U.S. Supreme Court **NOT PROTECTED** under Umbrella of First Amendment

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### First Amendment does not protect

- 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** (1-800-THE-LOST)

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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**Report an Incident**

Information entered into this form will be provided to law enforcement for possible investigation. You can contact the National Center for Missing & Exploited Children 24 hours a day at 1-800-THE-LOST.

Incident Information

What are you reporting?

Where did the incident occur?

Approximate Date and Time of Incident

Time Zone

Do you have information about the suspect or child victim?  Yes  No

\*Mandatory reporting form

Copyright © 2003, National Center for Missing & Exploited Children, all rights reserved.

The National Center for Missing & Exploited Children is a non-profit organization. It is a 501(c)(3) organization. It is not affiliated with the U.S. Department of Justice. It is not a law enforcement agency. It is not a government agency. It is not a government contractor. It is not a government employee. It is not a government contractor. It is not a government employee. It is not a government contractor. It is not a government employee.

CyberTipline.com

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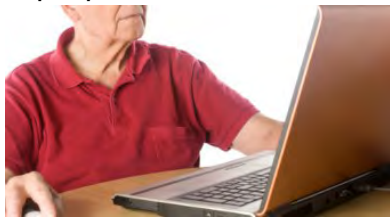
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**What about man with his own laptop or mobile device?**



United States v. Talley, 392 Fed. Appx. 129, 2010 U.S. App. LEXIS 17058 (4th Cir. Va. 2010); cert. den. 131 S. Ct. 84 (2010)

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What about man with his own laptop or mobile device?



Child Pornography is ILLEGAL  
Any device

United States v. Talley, 392 Fed. Appx. 129, 2010 U.S. App. LEXIS 17058 (4th Cir. Va. 2010); cert. den. 131 S. Ct. 84 (2010)

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**Key Point**

It's not censorship to report child pornography.

Child pornography is against the law.



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**Obscenity**

- Community standards find prurient interest
- Patently offensive sexual conduct defined by state law ... **and**
- Taken as a whole *lacks serious* literary, artistic, political, or scientific value.

CIPA cites 38 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)

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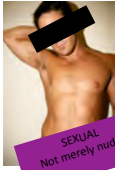
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**Libraries with E-Rate discounts and certain LSTA funds \***

Required to block or filter "visual depictions"



	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 Graphic Violence Harmful to Minors?**

Supreme Court:  
No



*Brown v. Entertainment Merchants Assn., 131 S. Ct. 2729 (2011)*

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**May Library Filter Hate Sites?**



Not recommended.  
CONSENT JUDGMENT: LIBRARY REMOVES HATE FILTERS

6. Maplewood City Library...  
any Internet filter that re...  
other than those proscrib...  
254(h)(6) of the Children's...  
Access to Computer Port...  
of the First and Fourteenth

*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*  
<http://tinyurl.com/hatefilters>

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**May a School Filter LGBT Sites?**

Missouri school uses URL  
Blacklist (free).  
Blocks categories  
"pornography" "sexuality"

PFLAG claimed it blocks sites  
expressing a positive  
viewpoint towards LGBT

Students could request  
unblocking, but not  
completely anonymously



Parents, Families, and Friends of Lesbians and Gays v.  
Camdenton R-III School District, 2:11-cv-04212

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**No. Viewpoint Discrimination.**

School district must stop blocking LGBT websites, submit to monitoring of its filtering practices for 18 months and pay the ACLU's \$125,000 attorney fees



Parents, Families, and Friends of Lesbians and Gays v. Camdenon R-III School District, 2:11-cv-04212

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**Is Filtering Internet a removal of library content?**

It's complicated.

WA Supreme Court (6-3): Internet sites are part of collection development.

No need to disable filters.



Law: Library may disable "to enable access for bona fide research or other lawful purposes"

U.S. Supreme Court (2003): Concerns dispelled by the ease with which patrons may have filtering disabled.

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**Joint school / public library**



Library worthy mission of facilitating learning, research, and recreational pursuits. Not required to provide "universal coverage" and enjoys "broad discretion to decide what material to provide to [its] patrons."

Bradburn v North Central Regional Library District, 2012 U.S. Dist. LEXIS 50360 (April 10, 2012); See also U.S. v. American Library Association, 539 U.S. 194 (2003) (upheld filters, noting that librarians can disable on request)

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**Responding to Challenges**

**Constitution**  
**Federal Law**  
**State Laws**  
Local laws  
Library Policies

*Where does ALA Code of Ethics fit in?*

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**Responding to Challenges**

**Code of Ethics**  
equitable access, unbiased, and courteous responses to all ...

**Library Bill of Rights**  
right to use library not denied or abridged because *origin, age, background, or views*



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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 cookbooks with hamburgers

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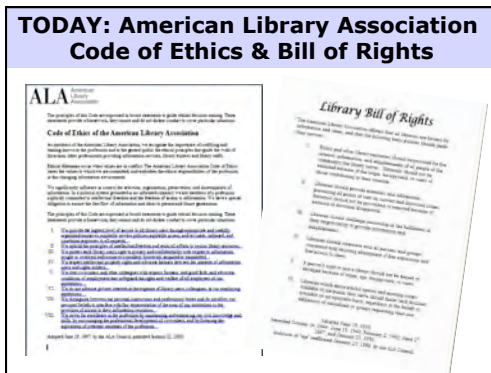
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**Dealing with Challenges to Books and Other Library Materials**

**Key point:**  
Use library policy

**REMOVAL DECISIONS MADE BY DIRECTOR AND BOARD**

**Resources:**  
ALA Office for Intellectual Freedom  
<http://tinyurl.com/ydtbwp3> 800-545-2433, ext. 4223

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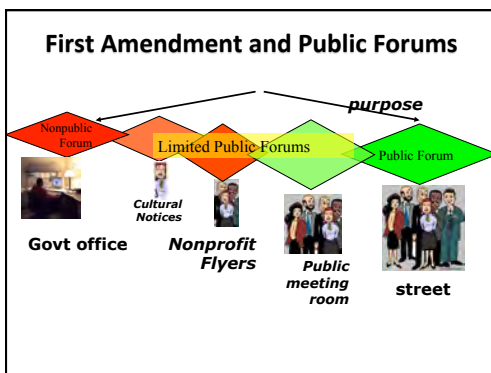
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### Public Comments in Limited Public Forum

- ▶ Define purpose of the space
  - Broad: Library services
  - Narrow: Reading game
- ▶ Ask for civility (but don't enforce)
- ▶ Remove OFF TOPIC
  - Cialis
  - Personal attacks that are off topic
- ▶ Bury offensive posts



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### Want More Control?

Treat online space as a newsletter with letters to the editor

"Government speech"  
Content is determined by library



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### But isn't the library responsible for libel?

No.

Matchmaker.com not liable when user posted false profile for Star Trek actress

*Carafano v. Metroplash.com, Inc.*, 339 F.3d 1119 (9<sup>th</sup> Cir. 2003)



Sect. 230 broad protection – from false information, negligence, sexually explicit content, discrimination

*No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. 47 USC§ 230(c)*

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**ery tough to show threats, stalking**

**NCSL**  
NATIONAL CONFERENCE OF STATE LEGISLATURES

**Stalking Case Summaries**

**State Statutes**

State	Cyberstalking	Stalking
Alabama	Alabama Code §§ 13-11-100, 13-11-101, 13-11-102	Alabama Code §§ 13-11-100, 13-11-101, 13-11-102
Arizona	Arizona Revised Statutes § 13-1502	Arizona Revised Statutes §§ 13-1501, 13-1502
California	California Penal Code § 26300	California Penal Code §§ 26300, 26301, 26302, 26303, 26304, 26305, 26306, 26307, 26308, 26309, 26310, 26311, 26312, 26313, 26314, 26315, 26316, 26317, 26318, 26319, 26320, 26321, 26322, 26323, 26324, 26325, 26326, 26327, 26328, 26329, 26330, 26331, 26332, 26333, 26334, 26335, 26336, 26337, 26338, 26339, 26340, 26341, 26342, 26343, 26344, 26345, 26346, 26347, 26348, 26349, 26350, 26351, 26352, 26353, 26354, 26355, 26356, 26357, 26358, 26359, 26360, 26361, 26362, 26363, 26364, 26365, 26366, 26367, 26368, 26369, 26370, 26371, 26372, 26373, 26374, 26375, 26376, 26377, 26378, 26379, 26380, 26381, 26382, 26383, 26384, 26385, 26386, 26387, 26388, 26389, 26390, 26391, 26392, 26393, 26394, 26395, 26396, 26397, 26398, 26399, 26400

Pending case before Supreme Court: *Elonis v. United States*

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**Terms of Service**

**Facebook**

**The Twitter Rules**

**Pin it!**

<https://www.facebook.com/legal/terms>  
<https://support.twitter.com/articles/18311-the-twitter-rules>  
<https://www.pinterest.com/en/acceptable-use-policy>

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**SOCIAL MEDIA, ADMINISTRATIVE AGENCIES, AND THE FIRST AMENDMENT**

ALISSA ARDITO

Further Reading

Notre Dame Law Review

Online Terms of Service: A Shield for First Amendment Scrutiny of Government Action

[http://politicalscience.yale.edu/sites/default/files/ardito\\_alissa\\_socmediaadminagenciesandfirstamend.pdf](http://politicalscience.yale.edu/sites/default/files/ardito_alissa_socmediaadminagenciesandfirstamend.pdf)

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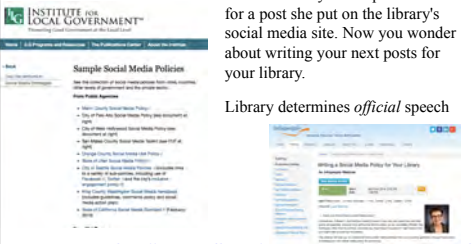
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### Employees and Social Media

You heard that a library worker in the next county was reprimanded for a post she put on the library's social media site. Now you wonder about writing your next posts for your library.

Library determines *official* speech



<http://www.ca-ile.org/post/sample-social-media-policies>  
*Graziosi v. City of Greenville*, No. 13-60900 (5th Cir. Jan. 9, 2015)

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### Social Media Speech as Private Citizen

Public employees, (unlike private) do have some limited First Amendment rights to speak out on matters of public concern.

**Court must find YES to all three ... or**

- 1) Private (not workplace) speech?
- 2) Public concern? Corruption? (mere gripes don't qualify)
- 3) Does public interest outweigh employer's interest in maintaining order?



employee loses

e.g. off duty police officer terminated after criticizing chief on Facebook. Loses case.

But note: Speech protected for some "concerted activity" e.g. union organizing  
<http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media>

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### Recap

Library shelves

- Books (schools and public libraries)
- Internet

Responding to challenges

- American Library Association

Social Media update

- Public and staff posts

**Legal information, not legal advice**

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### Social Media

Public comments

One public comment on the library's social media site seems like a slur and another seems like a threat. Should you remove them?



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Questions

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Thank you



minow@librarylaw.com

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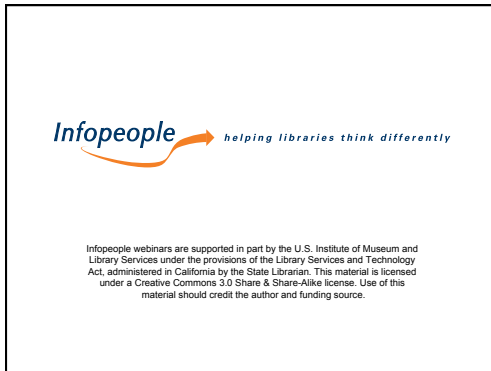
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Intellectual Freedom: Basic training for new staff and a refresher for the rest of us 02/15/15



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