Literature Review and Analysis:

Internet Filters and Intellectual Freedom

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In 1997, the American Library Association issued its *Resolution on the Use of Filtering Software in Libraries*, which affirmed “that the use of filtering software by libraries to block access to constitutionally protected speech violates the *Library Bill of Rights*” (American Library Association, 1997). Along with the ACLU and other information organizations, the ALA filed suit against the U. S. Government to block mandatory filtering of Internet computers in public libraries; although that suit was resolved in favor of the ALA and ALCU, new filtering bills, including the Children’s Internet Protection Act (signed into law by President Clinton in 2000), have led to renewed legal battles. While most librarians are familiar with the lawsuits, few understand the legal and constitutional issues, including freedom of expression and the public forum doctrine, at stake in this debate. In this paper, I will attempt to review some of the literature addressing these issues in order to clarify the challenges of preserving intellectual freedom in a public library setting.

Barbara M. Jones discusses the public forum doctrine and its implications for public libraries in her *Libraries, Access, and Intellectual Freedom* (1999). According to Jones, the public forum doctrine is an interpretation of the First Amendment to the U. S. Constitution, which states, in part, “Congress shall make no law … abridging the freedom of speech, or of the press; or of the right of the people peacefully to assemble.” The public forum doctrine was first stated by the U. S. Supreme Court in 1939 in their ruling on *Hague v. Congress of Industrial Organizations*. According to Jones, “this ruling opened public parks and certain other public areas to free speech, regardless of topic or point of view” (1999, p. 2). In the 1980’s, the Supreme Court began to refine the concept of a public forum; in its 1983 ruling on *Perry*
Educational Association v. Perry Local Educators’ Association, the Court identified three types of public fora: traditional, limited or designated, and non-public (Jones, 1999, p. 3). The limited public forum is a space designated by the government or a public entity; this designation can be limited with respect to time, place, or manner (Jones, 1999, p. 4). Jones locates the origin of these limitations in Graymed v. City of Rockford (1972), in which the Court ruled that “the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time” (Jones, 1999, p. 4).

In 1992, public libraries were specifically identified as limited public fora by the U. S. Court of Appeals for the Third Circuit. In their ruling on Kreimer v. Morristown, the Third Circuit ruled that the First Amendment “additionally encompasses the positive right of public access to information and ideas. … [T]his right … includes the right to some level of access to a public library, the quintessential locus of the receipt of information” (as cited in Penway, 1996, p. 326). The Third Circuit further ruled as follows:

It is clear to us that a public library, albeit the quintessential locus for the exercise of the right to receive information and ideas, is sufficiently dissimilar to a public park, sidewalk or street that it cannot reasonably be determined to constitute a traditional public forum. Obviously, a library patron cannot be permitted to engage in most traditional First Amendment activities in any library, such as giving speeches or engaging in any other conduct that would disrupt the quiet and peaceful library environment…. In our view … the library constitutes a limited public forum, a type of designated public fora (cited in Penway, 1996, p. 330).

Anne Levinson Penway (1996) notes that this ruling sets a “persuasive precedent for courts addressing similar issues in the future” (p. 332).
Barbara Jones goes further than Penway in discussing the implications of this designation. In Jones’s view, “libraries do have the option of restricting some forms of free speech that might detract from the library’s mission. This presupposes that individual libraries have mission statements and policies to fit that mission” (1999, p. 13). Jones further comments, however, that the limited public forum designation is problematic for public libraries because of the mixture of children, youth, and adults who use these libraries; in Jones’s words, “this mix has created the ongoing controversy about whether to filter publicly accessible Internet content for the sake of restricting information that may be legally ‘harmful to minors’” (1999, p. 22).

The controversy over filtering revolves in large part around materials selection policies for public libraries. According to the American Library Association (ALA), “the primary purpose of a materials selection or collection development policy is to promote the development of a collection based on institutional goals and user needs. A secondary purpose is defending the principles of intellectual freedom” (American Library Association, 1996, p. 199). This fundamental policy is frequently cited by supporters of Internet filtering in public libraries. In David Burt’s strongly-worded “In Defense of Filtering,” for example, Burt argues that “every library has the right to include or exclude access to any electronic resource based on its appropriateness or inappropriateness to a library’s mission and collection development policies” (1997, p. 47). Will Manley essentially makes the same argument when he proclaims, with respect to the ALA’s opposition to the Children’s Internet Protection Act,

I can’t think of a single member of ALA who would publicly or privately advocate giving children access to pornography. I can’t think of a single librarian who would advocate the cause of putting *Penthouse, Playboy, or Hustler* on the magazine shelves of a youth services library. Why then would our proud professional association challenge the legality
of a law that helps keep these kinds of resources out of the reach of our children? (2001, p. 128).

He concludes that the ALA has a “distorted commitment to the principles of intellectual freedom” (2001, p. 128).

However, as Edward J. Elsner comments in “Legal Aspects of Internet Filtering in Public Libraries,” “filtering is closer to removing books already in a library’s collection than it is to simply not selecting certain books. This recognizes that library officials need to expend extra effort to filter the Internet” (2001, p. 219). Elsner refers to the ruling of the U. S. District Court in *Mainstream Loudoun v. Board of Trustees*, in which U. S. District Judge Leonie M. Brinkema found that “the Internet therefore more closely resembles plaintiffs’ analogy of a collection of encyclopedias from which defendants have laboriously redacted portions deemed unfit for library patrons. As such, the Library Board’s action is more appropriately characterized as a removal decision” (*Mainstream Loudoun v. Board of Trustees*, 1998).

Such removal decisions are addressed in the American Library Association’s *Library Bill of Rights*, originally adopted in 1948 and amended in 1961 and 1980. Paragraph II of the *Library Bill of Rights* reads “Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.” G. Edward Evans writes that the *Library Bill of Rights* is “a standard by which one can gauge daily practices against desired professional behavior in the realms of freedom of access to information, communications, and intellectual activity” (2000, p. 546). Because the *Library Bill of Rights* is a core statement of beliefs accepted by most members of the library community, censorship is not considered acceptable practice. According to paragraph 3 of the *Library Bill of Rights*, “libraries should challenge
censorship in the fulfillment of their responsibility to provide information and enlightenment” (American Library Association, 1980). A standard definition of censorship has been provided by Charles Busha: “the rejection by a library authority of a book (or other material) which the librarian, the library board or some person (or persons) bringing pressure on them holds to be obscene, dangerously radical, subversive, or too critical of the existing mores” (1972, pp. 283-84). Most libraries have policies (sometimes included in the overall materials selection policy) specifying the process by which library materials can be challenged; as Barbara Jones points out, “Internet content, in most cases, is legally treated the same as book content. Form your analogies and policies accordingly” (199, p. 104).

Curiously, few proponents of Internet filtering have been willing to accept such challenges as a viable route to excluding materials from the public library. Perhaps this is due to the stigma of censorship. Alternatively, it may simply be due to the fact that, as listed on the ALA’s Filtering Fact Sheet (citing a 1999 report in *Nature* by S. Lawrence and C. L. Giles), “every 24 hours, about 4.3 million new pages are added to the World Wide Web…. The average life span of a Web page is about 44 days” (American Library Association, 2000). Moreover, while the library itself is a limited public forum, the Internet is increasingly being interpreted as a traditional public forum, as in the Supreme Court decision *Reno v. American Civil Liberties Union* (1997), which states that the Internet “constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers,” and that “any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox” (as cited in American Library Association, 1997). A challenge to the Internet would, in many ways, be a challenge to democracy itself.
References


