ALA Library Bill of Rights interpretations

By Patricia Senn Breivik

Access to electronic information, services, and networks

ast spring the ACRL Board was presented with a copy of a recently developed interpretation of the *Library Bill of Rights* on access to electronic information, services, and networks for endorsement. After reading the document, several Board members had concerns about it, which they raised when the item came before the Board for discussion and action.

The Board drafted a response to the interpretation expressing its discomfort with some of its phrasing. It asked the Intellectual Freedom Committee to defer taking action on the interpretation at the Annual Meeting and to consider its comments, but the decision was made by Judith Krug, director of ALA's Office for Intellectual Freedom, to proceed in taking it before Council for a vote. At Council the Board discovered that there were several ALA units and many individuals who shared ACRL's con-

cems. When the vote came to the floor of Council it was defeated.

Since the Annual Conference, ACRL sent letters to the other ALA divisions expressing its concern about the relationship between the ALA Intellectual Freedom Committee and divisions, and to the Intellectual Freedom Committee highlighting its concerns. ACRL is working with representatives from other divisions to address specific wording changes in the interpretation, and divisional leaders have agreed to discuss relations between divisions and the Intellectual Freedom Committee at Midwinter. At press time, I talked to Candace Morgan, chair of ALA's Intellectual Freedom Committee, who assured me that ACRL's input was important and that a new version of the interpretation would be issued shortly.

The interpretation, ACRL's response to it, and letters to the Intellectual Freedom Committee and to other ALA divisions are being shared with you for your information. Please feel free to contact any of the members of the ACRL Board of Directors to answer questions you may have or give comments on these documents.

Access to Electronic Information, Services, and Networks: An Interpretation of the *Library Bill of Rights* (version 1.4, 6/25/95) [a new version is expected shortly]

The world is in the midst of an electronic communications revolution. Based on its constitutional, ethical, and historical heritage, American librarianship is uniquely positioned to address the broad range of information issues being raised in this revolution. In particular, librarians address intellectual freedom from a strong ethical base and an abiding commitment to the preservation of the individual's rights.

Freedom of expression is an inalienable human right and the foundation for self-government. Freedom of expression encompasses the right to freedom of speech and the corollary right to receive information. Such rights extend to minors as well as adults. Libraries and librarians facilitate the exercise of these rights by providing access to, identifying, retrieving, organizing, providing instruction in the use of, and preserving recorded expression regardless of format or technology.

The American Library Association expresses the basic principles of librarianship in its *Code* of *Professional Ethics* and in the *Library Bill of*

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Rights and its Interpretations. These serve to guide professional librarians and library governing bodies in addressing issues of intellectual freedom and the rights of the people they serve.

Issues arising from the still-developing technology of computer-mediated information need to be approached and regularly reviewed from a context of constitutional principles and established policy so that fundamental and traditional tenets of librarianship are not swept away.

It is the nature of electronic information that it flows freely across boundaries and barriers despite attempts by individuals, governments, and private entities to channel or control it. Even so, many people, for reasons of technology, infrastructure, or economic status do not have access to electronic information.

In making decisions on how to offer access to electronic information, each library should consider its mission, goals, objectives, and cooperative agreements, and the needs of all the people it serves. Such considerations will address the rights of users, the equity of access, and information resources and access issues.

The rights of users

All library system and network policies, procedures or regulations relating to electronic resources and services should be scrutinized for potential violation of user rights.

User policies should be developed according to the policies and guidelines established by the American Library Association, including Guidelines for the Development and Implementation of Policies, Regulations and Procedures Affecting Access to Library Materials, Services and Facilities.

Users have the right to be free of interference and unreasonable limitations or conditions set by libraries, librarians, system administrators, vendors, network service providers, or others. This specifically includes contracts, agreements, and licenses entered into by libraries on behalf of their users.

No user should be restricted or denied access for expressing or receiving constitutionally protected speech. No user's access should be changed without due process, including, but not limited to, notice and a means of appeal.

Although electronic systems may include distinct property rights and security concerns, such elements may not be employed as a subterfuge to deny users' access to information. Users have a right to information, training and

assistance necessary to operate hardware and software provided by the library.

Users have the right of confidentiality in all of their activities with electronic resources and services provided by the library, and the library shall ensure that this confidentiality is maintained. The library also should support, by policy, procedure, and practice, the user's right to privacy; however, users should be advised that because security is technically difficult to achieve, electronic communications and files could become public.

The rights of users who are minors shall in no way be abridged.¹

Equity of Access

Electronic information, services, and networks provided directly or indirectly by the library should be readily, equally, and equitably accessible to all library users. Once the decision is made to provide access to electronic information, the user must not be required to pay to obtain the information or use the service. When resources are insufficient to meet demand, rationing service may be necessary to provide equitable access. All library policies should be scrutinized in light of Economic Barriers to Information Access: an Interpretation of the Library Bill of Rights and Guidelines for the Development and Implementation of Policies, Regulations and Procedures Affecting Access to Library Materials, Services and Facilities.

Information Resources and Access Issues

Electronic resources provide unprecedented opportunities to expand the scope of information available to users. Libraries and librarians should provide material and information presenting all points of view. This pertains to electronic resources, no less than it does to the more traditional sources of information in libraries.²

Libraries and librarians should not deny or limit access to information available via electronic resources because of its allegedly controversial content or because of the librarian's personal beliefs or fear of confrontation. Information retrieved or utilized electronically should be considered constitutionally protected unless determined otherwise by a court with appropriate jurisdiction.

Providing access to electronic information, services, and networks is not the same as selecting and purchasing material for a library collection. Libraries may discover that some information accessed electronically may not meet a library's selection or collection development policy. It is, therefore, left to each user to determine what is appropriate. Parents who are concerned about their children's use of electronic resources should provide guidance to their own children.

Just as libraries do not endorse the viewpoints or vouch for the accuracy or authenticity of traditional materials in the collection, they do not do so for electronic information.

Libraries must support access to information on all subjects that serve the needs or interests of all users regardless of the user's age or the content of material. Libraries and librarians should not deny access to information on the grounds that it is perceived to be frivolous or lacking value.

Libraries have a particular obligation to pro-

vide access to government publications available only in electronic format.

In order to prevent the loss of information, libraries may need to expand their selection or collection development policies to ensure preservation, in appropriate formats, of information obtained electronically.

Notes

- 1. See Free Access to Libraries for Minors: An Interpretation of the Library Bill of Rights; Access to Resources and Services in the School Library Media Program; and Access for Children and Young People to Videotapes and Other Non-print Formats.
- 2. See Diversity in Collection Development: An Interpretation of the Library Bill of Rights.

Ed. note: Contact the ALA Office for Intellectual Freedom for these documents.

Memo to ALA Intellectual Freedom Committee from ACRL Board of Directors

The Board of ACRL, ALA's largest division, has substantive reservations about the Library Bill of Rights for Electronic Information Services and Networks and asks that this document not be finalized until its concerns are addressed and resolved. These are two overriding general concerns.

A.) Documents such as this one do not address the realities of academic life and, therefore, can put academic librarians in untenable positions. For example, to say that "Libraries and librarians should not limit access to information on the grounds that it is perceived to be frivolous or lacking value" is to assume that planned collection development has no relevance to academic libraries and that librarians have unlimited funds for acquisitions. Moreover, since faculty members are often most eager to have libraries buy materials which are of almost exclusive interest to them, statements such as these seem to imply that academic librarians are morally obligated to respond no matter how esoteric the request to campus curriculum and research priorities.

B.) Adding another interpretation to the Bill of Rights appears to expand the complexity of the issue by proliferating the documents relevant to intellectual freedom. If an ever increasing number of interpretations are needed then perhaps the basic document needs to be changed.

In addition, it is particularly noteworthy that the text points to keeping the electronic access consistent with library policies toward print materials. It is important not to let the "rapidity of delivery" which the technology provides blind us to the essential intellectual freedom issues that have traditionally been of concern to librarians and which they have defended vigorously.

Simultaneously there are some difference because of the nature of computers in an academic and research library setting which need to be examined further. These include:

(I) Page 2, Equity of access. It is not clear whether "rationing service" includes charging for services beyond some basic level of activity. Therefore, for example, if online searching of a commercial vendor's database is an established service, can the library charge for service beyond some maximum allowable amount to which all have access? Unless rationing includes charging for use beyond some basic level then I fear that many institutions would not support the statement and their policies would conflict with it. Another aspect of the rationing has occurred to me and that is differential charging (or even prohibition) for services depending on the purpose of the use. Thus for example, online search charges might be billed to a patron who is seeking personal information as opposed to information in support of a

course assignment. Many institutions use this as a form of rationing.

(II) Page 3, Information Resources, 5th paragraph. This statement on access to all materials is inconsistent with the widely applied policy in academic settings of restricting use of computers for games and other nonacademic uses. This policy varies among institutions in its strictness, but at a minimum, states that class-related use of computers has priority and those using computers for non-class purposes must give way to those who need it for class purposes. More stringent limits include no game playing at all on the theory that wear and tear on equipment, especially on mouse and keyboard, shortens the life of the machine so that the institution cannot replace the equipment as frequently as would be necessary. In academic libraries there generally is a restriction that limits some computer use and access to students and faculty of the institution. It is important to make distinctions between such things as CD-ROMs and public online systems and use of computer resources such as central system information, E-mail and other uses that require authorization and an individual computer account.

(III) Page 3, Information Resources and Access Issues, third paragraph. The distinction between access and ownership is too casually

made here. The library has a responsibility to apply collection development criteria to the materials for which it provides access. However that selection should not be driven by issues of personal taste and should not be censorious. The two sentences that conclude the paragraph apply equally well to collections the library owns as well as to information for which it provides access. Bottom line, we can endorse the last two sentences but I don't think they are exclusively applicable to electronic information because it is accessed rather than owned.

It is also incorrect to say, as the first sentence implies, that libraries only provide access to electronic information and do not select and purchase such material. The purchase of CDs and multimedia programs falls under a collection development policy as do print resources.

The Board received version 1.4 dated June 25, 1995, of these interpretations of the *Library Bill of Rights* which it has not had the opportunity to study at this conference. Should a newer version address some of our concerns we thank you, but further discussion is clearly needed once units have had the time to study the document. No formal approval of the document should be given until such discussion can take place.

Memo to ALA Division Presidents and Executive Directors from Patricia Senn Breivik

It was not with pleasure that ACRL, through its ALA Councilor, raised concerns about the document "Access to Electronic Information. Services, and Networks: An Interpretation of the Library Bill of Rights" at the last meeting of the ALA Council in Chicago. Yet, when an informal request to Judith Krug, Director, ALA Office for Intellectual Freedom, to slow the process down to allow for addressing concerns in a positive fashion rather than on the floor of Council was rebuffed, we felt we had no choice. Very shortly thereafter we learned of another division that had very similar concerns, and the discussion at Council showed that the concerns were more broadly felt than by just two divisions.

Now, some months later, I am forwarding to you the attached memo which the ACRL Executive Committee reviewed at its recent meeting and which we are forwarding to Candace Morgan, Intellectual Freedom Committee (IFC) Chair, and Judith Krug. We wanted to share it with you so as to encourage other ALA divisions to take time also—whether or not the particular issues raised from an academic perspective are of concern to your membership—to respond substantively to the Library Bill of Rights, interpretation for "Access to Electronic Information, Services, and Networks" prior to the Midwinter Meeting and also to copy other division presidents so that we may all be aware of the collective concerns that exist.

In addition to the issue of the wording of the electronic interpretation, there is also a process issue of concern to us, i.e., the relationship of the Intellectual Freedom Office and Committee to the divisions and other major units of ALA. As mentioned earlier, when ACRL leadership requested a delay in bringing forward the draft of the electronic interpretation to Council, its request was summarily dismissed be-

cause, we were told (as was restated in Krug's American Libraries September 1995 interview). IFC was "being harassed to get this policy on the books" and therefore, the IFC was knowingly rushing the document through "faster than we have ever taken any intellectual freedom policies forward."

The question must be asked as to where the IFC gets such mandates: from ALA and its divisions and other major units, some unnamed and undefined group of individuals, and/or only IFC members and staff? Since, as of October 6, 1995, the ACRL Board has still not had any response to the memo it forwarded to IFC during the annual conference raising specific questions about draft 1.4 (see attached), it could be interpreted that, in practice, its sending requests for feedback from various ALA units is only perfunctory.

I sincerely hope that is not the case, for there are already people outside librarianship who question the collective value of the individual cases championed by the IFC. Surely those people and the world in general should not see a situation where the well-motivated efforts of the IFC are so rushed or so insensitive to divisional concerns and/or the operational realities of today's libraries as to force internal division within the ranks of intellectual freedom supporters.

ACRL is interested to know if your division also has any process concerns regarding response to its input into intellectual freedom documents. Therefore I am asking you to discuss the issue with your Executive Committee and as appropriate with your Board as background to a discussion at the Presidents' breakfast at Midwinter.

Memo to ALA Intellectual Freedom Committee from Patricia Senn Breivik

It was not with pleasure that ACRL, through its ALA Councilor, raised concerns about the document "Access to Electronic Information. Services, and Networks: An Interpretation of the Library Bill of Rights" at the last meeting of the ALA Council in Chicago. In fact, given the very high esteem that academic institutions place on academic freedom, issues of intellectual freedom are doubly reinforced in the life of academic librarians. But, in our respect for the importance of academic and intellectual freedom, also comes a responsibility to speak up when specific actions and/or issues are questionable

Let me highlight three general areas of concern with the current Intellectual Freedom activities before addressing the specific concerns of the electronics interpretation.

1.) It would seem that the very strength of the Intellectual Freedom effort (i.e., the high level of commitment of ALA members) may become its weakness, as each aspect of every possible infringement is explored and prescribed in great detail. The proposed "Access to Electronic Information, Services, and Networks" will be the sixteenth interpretation of the Library Bill of Rights. Just as the laws and prophets of the Old Testament were interpreted into literally thousands of minor regulations which, for all practical purposes, put compliance beyond all but a very small group of people, there reaches a point when increasing supplementary detail can have a negative impact on the overall effectiveness of the original intent. When this happens, the need to be able to put forward the principle of intellectual freedom in clarion call to others, as well as to serve as a reasonable conscience to daily practice is lost. We cannot allow continuing addition of complex interpretations of the Library Bill of Rights to have diminishing positive effects. The ACRL Board of Directors, therefore, urges the Intellectual Freedom Committee (IFC) to aggressively explore how to simplify the interpretations to provide a more succinct and more effective support document(s) for the Library Bill of Rights.

2.) The ACRL Board would further point out the importance of guarding against wording in its documents that confuse nonlibrarians as to the juncture point between normal collection development efforts--which by their nature must involve purchasing some things and not purchasing others. Any statement that infers that libraries must or should buy or provide access to all materials wanted by its users is unrealistic in many settings. Comments in the electronic interpretation, for example, that state "once the decision is made to provide access to electronic information, the user must not be required to buy . . ." or that "librarians should not denv (Bill cont. on page 40)

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FILING is word-by-word (ALA, 1968).

ABBREVIATIONS: Standard abbreviations are used except in titles. Names of some organizations—ALA, ACRL, LC, etc.—are also abbreviated and are alphabetized as if spelled out.

SPECIAL ABBREVIATIONS:

appt. appointment

prof. profile

f. foundation

prog. program

port. portrait

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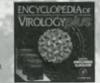
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ing copyright owners' effective control over data resources and stifle innovation and job creation in the private sector with overbroad prohibitions against manufacture and sale of legitimately useful consumer electronic devices. ALA continues to argue that to reduce educators' and the public's access to digital information by creating a new "transmission right" would make electronic communications "distributions" within the meaning of the Copyright Act. The White Paper would categorize even "browsing" as a potentially infringing "reproduction." (For additional information about the DFC, its other members, and activities contact Adam M. Eisgrau at the ALA Washington Office at (202) 628-8410 or e-mail: AME@alawash.org.)

Copyright term extension legislation

Legislation to extend the term of copyright from "life-plus-50" to "life-plus-70" years remains pending before the Judiciary Committees of both Houses of Congress. Consideration of the measure, however, remains stalled while negotiations on another bill (regarding the licensing of music by commercial and other establishments) continue. ALA, acting in concert with four other national library organizations, has

written to the chairmen of both committees requesting that the legislation be amended to provide libraries with the authority to "use" copyrighted works during the 20-year extension period. Language crafted by the library groups, and endorsed by Register of Copyright Marybeth Peters, would create the presumption that such use was permissible provided that it was neither undertaken with a prior profit motive, nor subsequently affected the market for the copyrighted work adversely. At ALA's request, House Courts & Intellectual Property Subcommittee chairman Carlos Moorhead (R-Calif.) wrote to Peters on November 29 requesting that she bring library and copyright owner industry representatives together to negotiate the text of a "library" amendment acceptable to both groups. At this writing it appeared likely that this meeting, perhaps the first of several. would take place between December 11 and 22. Library groups are acting under the assumption that time is of the essence. While no meeting of Moorhead's subcommittee to consider the term extension bill has been scheduled, should the music licensing issue be resolved, such a session could rapidly be convened before Congress' holiday recess.

(Bill cont. from page 33)

access to information on the grounds that it is perceived to be frivolous or lacking value," wave red flags before administrators of campuses. Moreover, just because a professor wants extensive materials in a controversial area, for example, he/she should not warrant ALA Intellectual Freedom championing any more than the professor with a similar level of unrealistic acquisitions expectations in a narrow area of the Classics.

3.) Since Annual Conference another related concern has arisen. It comes from a response made by Judith Krug, who is the very heart and voice of Intellectual Freedom, to a question asking the relationship between intellectual freedom and intellectual participation. In the September 1995 *American Libraries*, she is quoted as saying that "they're one and the same." We do not believe that these issues are the same or that intellectual participation is "just the next step after intellectual freedom."

In fact, the major information problem—the intellectual participation problem—confronting most people today is not having access to or not knowing what information is available to

help them address the problems of their daily lives. These information needs can and do run the gamut from how I can apply for unemployment, to where I can find reliable affordable child care, to what financial help I can get to go to college, to information on a recently diagnosed illness. And ALA's efforts within its Goal 2000 to address this larger issue should not be diminished to an add-on of the IFC's agenda.

As to the electronic interpretation, ACRL is again forwarding to you the memo it gave to you at the annual conference which raises specific concerns that it has regarding the 1.4 version. It would be our hope that the IFC would seriously consider these concerns as well as those raised by other people and make changes so as to allow us to support the interpretation. We also hope that the IFC will give substantive attention to the larger issues raised in this memo and will seek to work more cooperatively with ALA divisional leadership. Meanwhile members of our Board will work with ACRL's IFC in developing specific wording changes in the electronic interpretation for what it will forward to your committee prior to Midwinter.