

# Hooray for Freedom!

## Privacy, Confidentiality & Intellectual Freedom in the Public Library

Margo Gustina  
Southern Tier Library System  
gustinam@stls.org

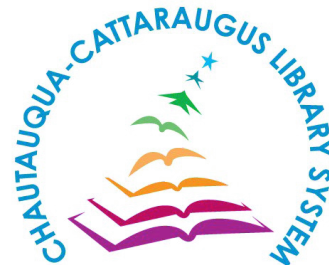
Eli Guinee  
Chautauqua-Cattaraugus Library System  
eguinee@cclslib.org



**STLS**

Southern Tier Library System

*Connecting Community Libraries*



move it

A parent of a 12 year old finds out that their child has a large fine and overdue books.

The parent comes to the circulation desk and wants to know what the fines are for and what books are still overdue.

**Would you give the parent the list?**

What if the parent told you they wanted the list not because they care about the money, but because they are worried that dark forces have taken over their child's soul?

**Would you give the parent the list to save their child's soul?**

What if the parent said that their child has been acting very funny lately and they are worried something bad is going to happen to the child?

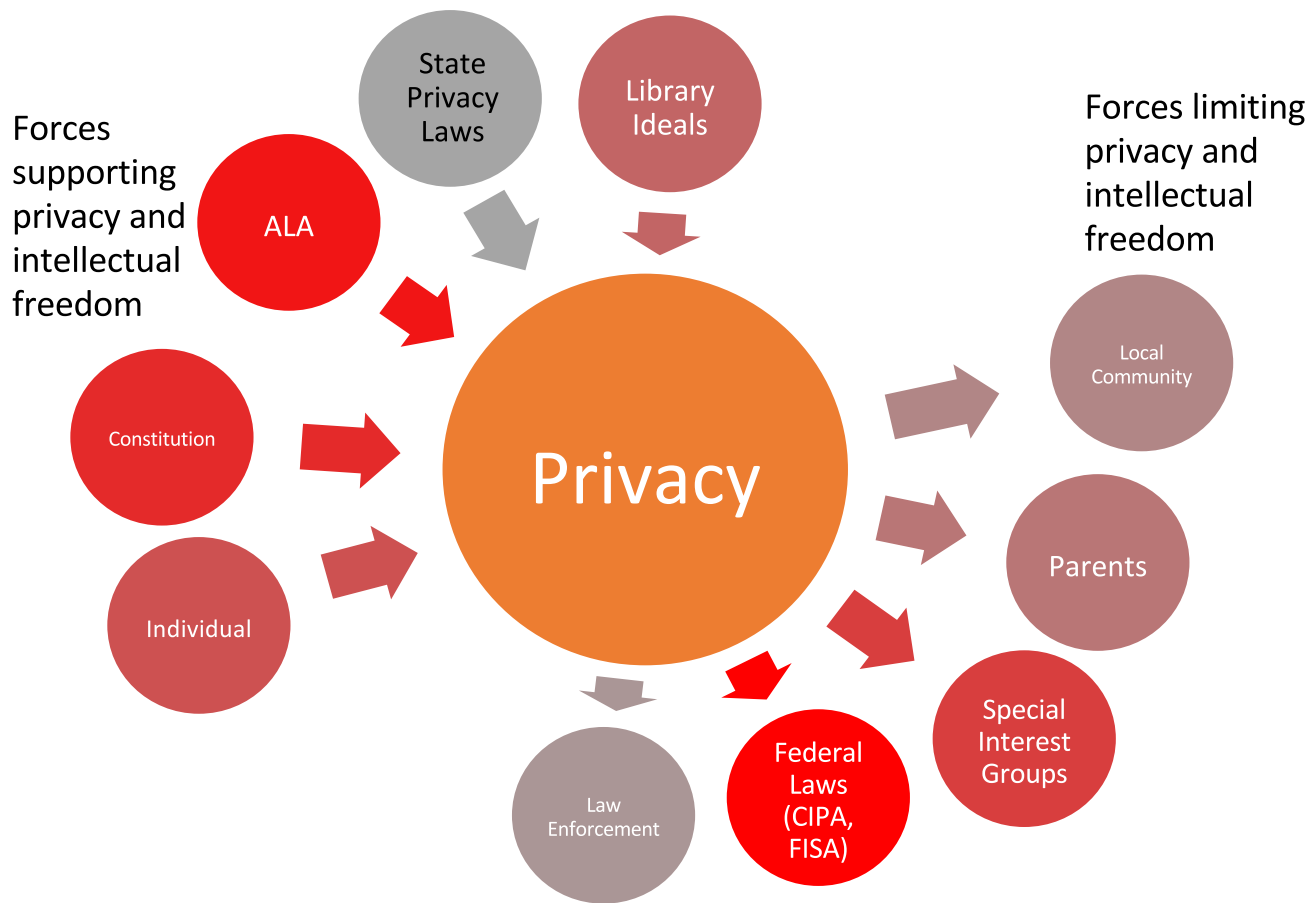
**Would you give the parent the list if they were worried about the child's health and safety?**

What if you looked at the list and realized that the items were not on subjects that would worry the parent?

**Would you provide the list so that the parent could stop worrying?**

What if you looked at the list and realized the topics were sensitive like “How to Come Out to Your Parents” and “Treatment of Sexually Transmitted Disease”?

**Would you provide the list if you knew that it contained the sort of books the parent might be worrying about?**





# Isn't it all up to the local community?

In our Governments the real power lies in the majority of the community, and the invasion of private rights is chiefly to be apprehended not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents. This is a truth of great importance.

- Madison, Oct. 17, 1788

discuss amongst  
yourselves

## **What is the difference between a public forum, a limited public forum, and a nonpublic forum?** (from Case Study—You Wanna Use it for What? )

*Public Forum*= Traditional sidewalk corner. It is open for expressive activity.

*Limited Public Forum*= AKA designated public forum. Nonpublic property that has been designated as open, and as such cannot be restrictive of content. Courts have determined that public libraries are designated public forums. (<http://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/faithcenter.pdf>. Religious groups can't be discounted, but they also can't hold "religious services" in publicly funded space.)

*Nonpublic Forum*= Property that is not open to public expression—eg. Staff meeting room. Courts determine this based on both policy and practice

<http://www.ifmanual.org/religionqa>

## **Is there any legal support for the confidentiality of the patron-librarian relationship?** (from Case Study—The Reference Request? )

Confidentiality is a state concern. In NY confidentiality is discussed in NY Civil Practice Law and Rules § 4509. Library records. Library records have been defined in cases as including records of reference requests and interviews, thus providing a level of legally supported confidentiality between librarians and those who come to them for assistance.

## **What is the definition of protected speech and do video games fall under that?**

(from Case Study—But they make it so loud! )

**Protected speech**= The right to express any opinion in public without censorship or restraint by the government, protected in the United States as a right under the First Amendment to the US Constitution.

Video games on the Public Access Computers may not be your first choice for use of this limited and coveted resource, but it is protected speech. It was created, either in collaboration or individually, as an expression and an interaction. If we will not restrain reading online, listening online, chatting online, or viewing online, limiting access to games is inconsistent at best.

## **Is there a legal distinction between what is considered pornographic, obscene, or indecent?** (from Case Study—Sketchy Internet Action )

*Pornographic*= writings, pictures, etc. intended primarily to arouse sexual desire. Is used to describe both obscene (unprotected speech) and indecent (protected speech).

*Obscene*= Includes 3 prongs: (1) an average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest (i.e., material having a tendency to excite lustful thoughts); (2) the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and (3) the material, taken as a whole, must lack serious literary, artistic, political, or scientific value. The Supreme Court has indicated that this test is designed to cover hard-core pornography.

*Indecent*= Indecent material contains sexual or excretory material that does not rise to the level of obscenity. For this reason, the courts have held that indecent material, including pornography (that is not marketed as containing minors, nor does it in actuality contain minors, and has not been judged obscene) is protected by the First Amendment and cannot be banned entirely.

[\(http://www.firstamendmentcenter.org/\)](http://www.firstamendmentcenter.org/)

**What parts of the USA PATRIOT act did the USA FREEDOM act change?**

(from Case Study—The Cult )

# How can you do better?

The self assessment is for your use. It includes recommendations and best practices from ALA and NYLA for making the most intellectually free environment.

# How can we do better?

We want to get better at this. Please help us by filling out this feedback form. And if you have suggestions later, email us! We want your ideas!



# Hooray for Contacts!

Margo Gustina

STLS

[gustinam@stls.org](mailto:gustinam@stls.org)

Eli Guinnee

CCLS

[eginnee@cclslib.org](mailto:eginnee@cclslib.org)