

## Chapter 1

# TRUSTEE DUTIES AND RESPONSIBILITIES



### *The Big Picture*

If legions of jobseekers were vying for trustee positions on library boards, a want ad for the job might read as above.

Of course, service on a library board is pro bono public service, so you will not have arrived here by dazzling a job interviewer. As a library user and supporter, you may have campaigned for an elected trustee position, or perhaps you hesitantly accepted appointment. Either way, you have a most important job to do.

A public library might be defined as a repository of information available to all in the community. This public resource addresses and meets a wide variety of needs. For some members of the community, the library is the chief or only source for recreational reading. For others, it is a valuable professional resource. Young children discover the wide world of ideas in the library. People of all ages use computers and the Internet at libraries to prepare themselves to function in the modern digital world. Disabled people find resources in public libraries that may not be available elsewhere. You, as a trustee, represent all of these people.

A public library, even of relatively small size, is a complex operation that requires informed and skillful administration and management. You, along with the other trustees on the library board, oversee performance of these roles by library staff.

### *The Board of Trustees*

Library trustees do their work collectively on the library board. Though the board has broad powers—it is answerable only to the governing body that has oversight over the library or, if elected, to the voters—those powers are exercised collectively. No individual trustee can speak or act for the board, or for the library, unless specifically empowered to do so by board action or adopted bylaws.

The board's crucial partner in administering the library is the library director. This professional has been hired by the board and serves at the board's pleasure. The board depends

heavily on the professional judgment and experience of the director. For example, the board of trustees can draft an annual budget for the library, but specific input about what moneys are needed for which purposes comes mainly from the director. As a trained professional, he or she is employed to assess needs such as acquisitions, staff coverage, and public services.

The remainder of this chapter details duties of the board of trustees, both those assisted and unassisted by the library director; responsibilities of individual trustees; and basic rules of ethics for trustees.

## **Duties**

Broadly speaking, the board of trustees establishes library policies, and the library director implements those policies in the day-to-day operations of the library. However, these roles are interdependent and require careful distinction of responsibility and authority.

The degree to which the board relies on the librarian's professional knowledge and experience will, of course, vary with the situation. In every case, however, cooperation is the key to a smoothly run, successful library. A library in which all the players work cooperatively toward the common goal will inevitably deliver greater benefits to the community than one in which trustees and librarian work competitively, at odds with each other. The following lists detail duties carried out collectively by boards of trustees in public libraries.

### ***Duties of the Board Assisted by Input from the Director . . .***

- Write and maintain an official mission statement for the library.
- Develop long-range plans to address anticipated community needs.
- Establish and support library policies. Examples of such policies include
  - levels of service (for example, open hours).
  - registration and circulation policies and other rules directly affecting patron use.
  - types of service (in addition to circulation and informational services, will the library provide special programs for children? the disabled? the visually impaired? or literacy training?).
  - confidentiality and privacy policies.
  - patron access to the Internet.
  - collection development policy.
- Authorize salary and benefits plans for library staff.
- Assess maintenance of library grounds and buildings, and authorize purchase of lands or construction of new buildings when necessary and appropriate.
- Develop an annual budget.
- Review monthly financial reports to ensure accountability to budget goals.
- Provide financial information and an independent audit as required by Illinois law.
- Advocate for funding necessary to meet community library needs.
- Engage in other fundraising activities as necessary and appropriate.
- Promote the library in the community.

### ***Duties of the Board, Exclusively . . .***

- Hire a qualified library director.
- Evaluate director's performance periodically, at least annually.
- Establish policies for the functioning of the board. Such policies include
  - by-laws governing meetings, quorums, selection of officers and the length of their terms as officers; and other matters relating to handling the business of the board.
  - finance policies (for example, how funds will be dispersed or invested, or who will be authorized to write checks).
  - trustee's code of ethics.

For more information about division of duties between the board of trustees and the library director, go online to the Illinois State Library Administrative Ready Reference, <http://www.webjunction.org/partners/Illinois/il-topics/readyref.html>: select **Policy Model; Board of Trustees**; select **Division of Responsibility**. . . .

### *You, Personally*

For the library machine to hum smoothly, every participant—trustee and staff—must shoulder a fair and proper load. To carry out the trustee duties which you have accepted, you will need to make a substantial commitment of time and effort.

### *Your Duties as a Trustee . . .*

- Attend board meetings.
- Preview agenda, minutes, and documents before each board meeting.
- Participate in discussion and decision making at board meetings.
- Stand by decisions made by the board.
- Serve on committees as assigned by chair.
- Commit time outside of board meetings for the work of the board, as necessary and appropriate.
- Participate in activities sanctioned by the board, such as fundraising or public relations in the community.
- Represent the library at community events—be visible and accessible to those you represent.
- Become informed about library issues through participation in the regional library system, ILA, and ALA.
- Become informed about state laws that govern public libraries in Illinois.
- Become an advocate for the library community.

As with any position of responsibility and accountability, library trusteeship calls for adherence to high standards of ethical behavior.

### *Your Ethical Responsibilities . . .*

- If you have a conflict of interest in a matter taken up by the board, you must remove yourself from consideration and voting on that matter. For example, your financial stake in a firm with which the board does or intends to do business would constitute a conflict of interest. (For more information about conflicts of interest, see Chapter 4, “Legal Responsibilities and Liability.”)
- Respect the opinions and contributions of other trustees; refrain from dogmatic or bullying behavior at board meetings. Work toward acceptable compromise on contentious issues.
- Do not voice opposition to board decisions in public; limit criticism to debates within board meetings.
- Respect confidential information: do not reveal content of closed session board discussions.
- Refer patron/public requests for information to the library director.
- Refer staff grievances or problems to the library director, who has full responsibility for managing staff; refrain from becoming involved in controversy or conflict among staff.
- Refer complaints from the public to the library director.
- Do not initiate or participate in ad hoc board meetings called without advance notice and knowledge of all participants. Conform to the Open Meetings Act in posting required meeting notices for the public and the press.
- Assume full responsibility as a board member. Attend board meetings regularly and perform all assigned committee work in a timely manner. If you are unable to fulfill your duties, consider resigning so that someone else can better serve.

- Support open access to information and resist moves toward censorship.

Finally, consider the benefits you will derive from serving as a library trustee. You will make new acquaintances and friendships with people who are passionate about, and dedicated to, values of public service. Some of these people will become personal friends; others will remain good professional associates. Whether you are a worker in a trade, a professional, a homemaker, an independent businessperson, or are engaged in some other life activity, the people network you establish during your tenure of trusteeship will likely prove to be of great benefit to you.

Then, of course, there is the obvious: you will be making an important contribution to the people in your community and to your community's future. A public library is one of the most universal and accessible institutions in our society. Your contribution as a public library trustee will help bring opportunity to all the people, irrespective of all the differences that sometimes divide communities in other spheres. Don't underrate the satisfaction you will derive from this endeavor.

## *Resources*

- Gale, Robert L. *Leadership Roles in Nonprofit Governance*. Washington, D.C.: Board Source, 2003.
- Grace, Kay Sprinkel. *The Ultimate Board Member's Book*. Medfield, Mass.: Emerson & Church Pub., 2008.
- Ingram, Richard T. *Ten Basic Responsibilities of Nonprofit Boards*, second ed. Washington, D.C.: Board Source, 2009.
- O'Connell, Brian. *The Board Member's Book: Making a Difference in Voluntary Organizations*, third ed. New York: Foundation Center, 2003.

## Chapter 2

# ORIENTATION FOR NEW TRUSTEES



This chapter has two parts. The first part, which follows immediately, is for new trustees. The second part is for anyone responsible for new member orientation, including mentoring library board member(s) and/or the library director.

### *So, You Are a New Library Trustee*

In the following sections, you will read about types of administrative units in Illinois public libraries. Then you will read a brief history of public libraries in the United States. Your colleagues on the board or the library director will conduct your orientation to the library, its services, and resources, and will provide you with various materials you need to begin your duties as a library trustee.

#### **Illinois Public Libraries—Administrative Types**

Many public libraries in Illinois are legally established by cities, villages, and townships, according to the Illinois Local Library Act, 75 ILCS 5. In these cases, the library's service boundaries are coterminous with that of the municipality or township. District libraries, which are established within independently defined boundaries, are the alternative to municipal libraries.

In towns, villages, and townships, citizens establish public libraries by referendum. Most towns and villages elect their library trustees; in villages with the commission form of government, the village council appoints library trustees.

In cities, the city government establishes a public library, and the mayor appoints trustees. Illinois law allows mayors to appoint one city council member to the library board, among a total of nine library trustees.

District libraries are public libraries established under the Illinois Public Library District Act, 75 ILCS 16. A district may include area from more than one local governmental unit and outlying unincorporated areas. District libraries have independent corporate authority and taxing power for support of public library services. Like other library administrative units, district libraries are run by a board of trustees.

The following table gives more detailed information about boards of library trustees among the various types of local libraries.

### ***Trustee Service by Type of Administrative Unit***

Type: City

Trustees Appointed/Elected: 9, appointed by mayor

Term of Service: 3 years

Type: Village/town/township

Trustees Appointed/Elected: 7, elected

Term of Service: 4 or 6 years

Type: Village with commission government

Trustees Appointed/Elected: 6, appointed by village council

Term of Service: 6 years

Type: District

Trustees Appointed/Elected: 7, elected

Term of Service: 4 or 6 years

### **A Brief History of Public Libraries**

In early colonial America, academic pursuits were largely allied with the education of clergy. The first significant library in the colonies was Harvard College Library, founded in 1636 with a gift of about 300 mostly theological books.

An important expansion of the concept and role of a civic library occurred in 1731 when Benjamin Franklin and other Philadelphians established a subscription library in Pennsylvania's chief city. In a subscription library, patrons pay a subscription, or fee, to use the pooled reading material of all the subscribers. Further distinguishing the "Library Company of Philadelphia" was the collection's emphasis on travel, philosophy, and biography, rather than religious topics.

Truly public libraries—open to all free of charge—were the creation of the United States in the new democratic age of the nineteenth century. Inspired by the founding of the new nation, the adoption of First Amendment free speech principles in the Bill of Rights, and extension of democratic expression and personal freedoms in the early years of the republic, the movement for universal public education gained momentum by the mid-1800's, creating demand for free public libraries as well. In 1854, Boston opened the first big-city public library funded by local taxes. In 1872, the Illinois General Assembly passed legislation authorizing tax-supported public libraries. Soon thereafter, public libraries were organized in the Illinois municipalities of Chicago, East St. Louis, Elgin, Moline, Oregon, Rockford, Rock Island, and Warsaw.

In step with these developments, librarian Melvil Dewey in 1876 helped establish the American Library Association (ALA), helped found the *Library Journal*, and published the Dewey Decimal classification system. In 1887, Dewey established the nation's first library school at New York's Columbia University. In 1896, the Illinois Library Association (ILA) was established.

As the twentieth century dawned, public libraries in the United States began to benefit handsomely from the philanthropy of steel tycoon Andrew Carnegie, whose charitable foundations eventually built about 1,700 libraries. Carnegie libraries were built in communities that agreed to provide land for building a library and to contribute some funding on an ongoing basis. By the 1920s, public libraries were widespread throughout the United States, with

publicly funded institutions in most towns of any size.

An important trend beginning in the mid-twentieth century has been involvement by the federal government in public libraries. Since the 1950s, Congress has allocated funding for rural library extensions, library construction, expansion of school libraries, provision of services for people with disabilities, and Internet connectivity, among other services.

In the last half-century, technology-driven developments have transformed public libraries in many ways. The new technologies have led to nearly universal computerization of card catalogs. Electronic and digital materials such as DVDs have enhanced library collections. In all but the smallest library branches, Internet access for patrons has become standard.

New services have posed new challenges. Internet connectivity offers potential access by minors to websites with inappropriate content, for example. Congress has responded by tying libraries' eligibility for certain federal funds to installation of filtering software. (See Chapter 6, "Intellectual Freedom," for more information on Congressional mandates codified in the Children's Internet Protection Act, or CIPA.)

Today, some 9,000 administrative units in the United States offer public library services in over 16,000 libraries, including branches. Our state of Illinois has 637 public libraries—796 if you count total branches and buildings. These public libraries endeavor to serve their changing communities in a variety of ways as they strive to maintain free and open access to information.

### ***Congratulations.***

You have completed your first step of orientation as a library trustee. The remainder of this chapter is primarily for your board member colleagues or the library director who are responsible for further orientation activities.

## ***Planning Orientation for a New Trustee***

The preceding part of this chapter provides background material that will help new library trustees put into context the duties they are about to assume. Have inductees read the material as part of their overall orientation activities.

Your library board should have a well-defined, written orientation plan in place. If it does not, suggest that the board establish a committee to draw up such a plan.

The following sections provide guidelines for orientation of new library trustees. The first section outlines orientation activities. The second lists materials that the board or library director should provide to new trustees.

### **Orientation Activities**

The board president, or her/his designate from the board, will make the initial contact with the new trustee to schedule orientation sessions. First and foremost should be a get-acquainted tour of the library with library staff. The library director or a management level staff person should conduct the tour, providing a "big-picture" overview of collections, services, and general policies. The director should introduce available staff members, explaining their duties.

The board president or her/his designate will then schedule an appointment with the inductee for an introduction to the business of the board, including bylaws; ethics; meeting times and formats; recent decisions and accomplishments; future plans and goals; and budgets.

Orientation for the incoming trustee might well extend into the next scheduled board meeting. For example, the board president might conduct business at a slower pace, encourage experienced board members to describe accomplishments of the past year, and allow time in the meeting for the new member to ask questions (no meetings after adjournment, even if

informal, if a quorum is present).

### ***Orientation Activities Summarized . . .***

- Activities conducted by the board president:
  - initial contact with inductee to schedule orientation
  - introduction of the bylaws and other business of the board
  - review of duties of the board and of the director
  - presentation of budget and other financial information
  - planning the agenda of the next scheduled board meeting so as to accommodate the information needs of the new member (if feasible and appropriate)
- Activities conducted by the director:
  - tour of library facilities
  - introduction of library staff members

### **Orientation Materials**

Eventually, new trustees will need to master the wide range of information relevant to governing the public library. Because the volume of such information is necessarily large, it is useful to focus on a smaller subset of such materials during the initial orientation. Following is a suggested list of materials for new trustees.

### ***Orientation Materials List . . .***

- Library mission statement
- List of board members and the director, including address, telephone number, and e-mail addresses
  - Indicate terms of office and identify officers.
- Calendar of board meetings and library holidays
- Organization chart of library staff
- Illinois Library Association *Trustee Facts File* (the publication you are reading)
  - Have inductee read Chapter 1 and the first part of Chapter 2 (this chapter) initially.
  - Draw attention to subsequent sections of the *Trustee Facts File*, as appropriate.
- Board of Trustees bylaws (reference the *Trustee Facts File*, Chapter 3)
- Library policy manual (reference the *Trustee Facts File*, Chapter 5)
- Budget for current and previous year (reference the *Trustee Facts File*, Chapter 10)
- Annual report, most recent available
- Monthly reports, most recent available
  - financial report: dispersal of monies
  - statistical report: volume of circulation, etc.
- Minutes from recent board meetings (reference the *Trustee Facts File*, Chapter 3)
- *Illinois Library Laws & Rules* (copyright 2012)
- *Serving Our Public: Standards for Illinois Public Libraries*, 2.0 (copyright 2009)
- Recent issues of the *ILA Reporter*, which can be obtained online from [www.ila.org/store/ila-reporter](http://www.ila.org/store/ila-reporter)
- Information about the Illinois State Library, regional library systems, and their relationships to local libraries
- Contact information, including website addresses, for the American Library Association (ALA), Illinois Library Association (ILA), and Illinois State Library (See Appendix G, "Selected Resources.")
- Local library history, if available
  - Append to the general history of U.S. public libraries in the first part of this chapter.
- Promotional materials—for example, the latest issue of the library newsletter or newspa-



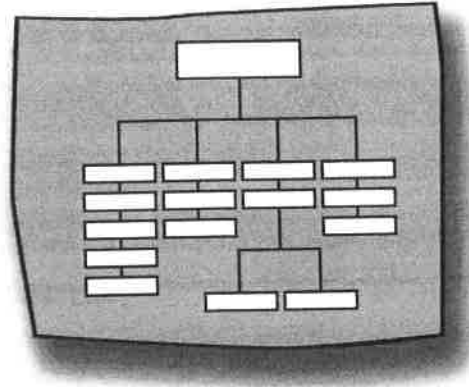
per articles about the library and its services (reference the *Trustee Facts File*, Chapter 13)

## *Resources*

- Hughes, Sandra R., Berit M. Lakey, and Marla J. Bobowick. *The Board Building Cycle: Nine Steps to Finding, Recruiting, and Engaging Nonprofit Board Members*, second ed. Washington, D.C.: Board Source, 2007.
- Kurtz, Daniel L. *Board Liability: Guide for Nonprofit Directors*. Mt. Kisco, N.Y.: Moyer Bell Limited, 2007.
- Moore, Mary Y. *The Successful Trustee Handbook*, second ed. Chicago: American Library Association, 2010.
- Reed, Sally Gardner and Jillian Kalonick. *The Complete Library Trustee Handbook*. New York: Neal-Schuman Publishers, 2010.
- Sturgis, Alice. *The New Standard Code of Parliamentary Procedure*, fifth ed. New York: McGraw-Hill, 2011.

## Chapter 3

# BOARD ORGANIZATION



In Chapter 1, you became acquainted with duties of library boards collectively as well as duties of individual trustees. This chapter focuses on the board's collective responsibilities and the organizational means available to execute those responsibilities. Before proceeding further, you might want to review in Chapter 1 the section entitled "The Board of Trustees."

### *Library Board Bylaws*

Every library board should establish *bylaws*, a set of rules that define the structure and function of the board and its operational procedures. The bylaws should be recorded in clear, unambiguous language. Board trustees should review bylaws annually and amend them as necessary. The bylaws of a public library board in Illinois must not conflict with federal or state laws.

The following list summarizes topics that the bylaws should address.

#### ***Contents of Bylaws . . .***

- The name of the board
- The constituency served by the library and its board
- The composition of the board
- Procedure for election or appointment of board trustees
- Terms of board trustees
- Procedure for filling an unexpired trustee term
- The schedule (frequency) of board meetings
- Procedure for calling special meetings of the board
- Specification of a quorum

A quorum is the minimum number of people who must be present in order for a deliberative body to transact business. There is no set quorum for library boards; each board establishes its own definition of a quorum in its bylaws. For example, a 7-member board may specify 4 as its quorum; so the trustees may transact business at a board meeting if 4 or more members are present.

- Summary of duties and powers of board officers
- Identification and description of standing committees
- Procedure for setting up special (ad hoc) committees

- Order of business for board meetings
- Rules of conduct for board meetings, such as *Robert's Rules of Order*
- Procedure for amending the bylaws

To view a sample set of library board bylaws, go online to the Illinois State Library Administrative Ready Reference, <http://www.webjunction.org/partners/Illinois/il-topics/readyref.html>: select **Policy Model; Board of Trustees**; select **Bylaws of the XYZ Public Library**.

## *Board Meetings and the Open Meetings Act*

The Illinois Open Meetings Act (5 ILCS 120) specifies that public bodies in the state of Illinois exist “to aid in the conduct of the people’s business and that the people have a right to be informed as to the conduct of their business.” The law mandates that deliberations and actions of public bodies be conducted in public, and that citizens be given advance notice of and the right to attend such meetings. The law defines a “meeting” as “any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business.”

Under state statutes, a library board is a “public body.” Therefore, board meetings and board committee meetings must be open to the public and conducted on days convenient to the public. It would not be proper, for example, to schedule a board meeting on a federal holiday. Effective January 1, 2012, elected or appointed members of a public body subject to the Open Meetings Act must complete the electronic training once during their term of election or appointment. The Public Access Counselor’s Office’s Open Meetings Act electronic training is available free of charge at: [http://foia.ilattorneygeneral.net/electronic\\_foia\\_training.aspx](http://foia.ilattorneygeneral.net/electronic_foia_training.aspx).

To conform to the requirements of the Open Meetings Act, library boards should publicize the schedule and location of regular meetings at the beginning of each calendar or fiscal year. The media may request a schedule as well. Boards should post the agenda for each meeting in a public area of the library 48 hours in advance of the meeting time.

When conducting an open meeting, make sure that library doors are unlocked. Let members of the public in!

## **Closed (“Executive”) Sessions**

A library board in the state of Illinois may meet in a closed, or executive, session if such a meeting is approved by “a majority vote of a quorum present” during a meeting that is open to the public. The closed session should be listed on the meeting’s agenda.

The board may schedule a closed session, for example, to consider any of the following matters: (1) negotiation for the acquisition of real estate, (2) the possible hiring of an individual, or (3) salaries of classes of employees. See the text of the law—5 ILCS 120/2 (c)—for more exceptions to open meetings. Information discussed in a closed session is to remain confidential until/ unless the matter is revealed or acted upon in open session by the board.

*To ensure the legality of all board meetings, discussions, and communications, trustees should become familiar with the requirements of the Open Meetings Act.*

## *Officers of the Board*

As stated previously, bylaws should clearly identify officer positions of the board and define the duties of each office. Most library boards require four officer positions, those of **president (chairperson)**, **vice-president**, **secretary**, and **treasurer**.

### **President (Chairperson)**

The president, working closely with the library director, prepares agendas for board meetings

for distribution to participants in advance of each meeting. The president presides at board meetings, serving as discussion leader, and appoints committee members. He or she signs official documents and may under instruction from the board represent the library at public meetings and gatherings. When the board president speaks on behalf of the library, he or she must reflect the adopted positions of the board, not personal views. As a single member of the board, he or she has one vote.

### ***Vice-President (Vice-Chairperson)***

The vice-president presides at board meetings in the absence of the president and performs such other duties as are assigned.

### ***Secretary***

The secretary records the proceedings of meetings, then prepares written minutes and issues them to trustees in advance of the next meeting. After the minutes of a past meeting are approved, the secretary prepares a permanent and correct copy for the archives of the library. The preparation of the minutes may be assigned to staff, but if delegated, the process is completed with the oversight of the board secretary. The Illinois Open Meetings Act mandates that minutes of all board meetings—including closed (or executive) sessions—must be prepared and archived. The minutes of open sessions should be kept in a secure but accessible location in the library and made available to the public upon request. Twice a year boards must consider whether to open minutes of individual closed sessions or keep them closed.

### ***Treasurer***

The treasurer's role typically depends on the size of the library. In smaller communities, the treasurer may handle funds, keep books, and prepare reports on the general finances of the library. In larger libraries, the treasurer is a legal officer named to assure that the financial operations of the library are handled properly, including oversight of annual audits. The board treasurer should prepare or assist in the preparation of annual budgets and chair the finance committee. By law the treasurer is bonded or insured in an amount not less than 50 percent of the total funds received by the library in the last fiscal year for all libraries except those municipalities over 500,000 in population (75 ILCS 5/4-9 and 75 ILCS 16/30-35e).

## ***Committees***

Most library boards delegate detail work to committees to save the time of the full board. Such committees prepare recommendations for the board's decision, but do not make those decisions on their own. If lengthy or complex, committee reports should be submitted in writing in advance of a board meeting.

Standing committees generally deal with ongoing and long-range concerns of the board, such as facility maintenance, finance, personnel, public relations, and fund raising. Special or ad hoc committees are created to deal with short-term or one-time tasks.

Committees are subject to the Illinois Open Meetings Act; therefore, their meetings should be conducted in public with appropriate advance public notice, and minutes of meetings must be recorded and archived.

## ***Agendas***

When not well planned, meetings tend to digress and waste participants' time. The board president should develop a meeting agenda and distribute it in a timely fashion before each board meeting. The following is a sample agenda.

### *A Sample Agenda . . .*

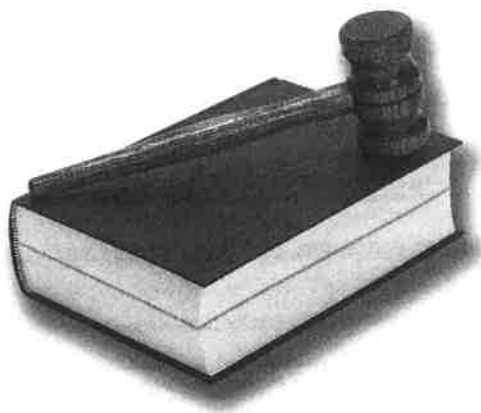
- Call to order; recording of attendance; determination of quorum
- Review of minutes from previous meeting; call for corrections or additions; motion to accept minutes
- Treasurer's report/authorization for the payment of invoices
- Library Director's report
- Board President's report
- Committee reports
- Public comment
- Unfinished business
- New business
- Closed Session (best to keep on the agenda permanently so the session is always in order if needed)
- Items for the next agenda
- Announcements
- Adjournment, with announcement of date, time, and place of next meeting

### *Resources*

- Chait, Richard P. *How to Help Your Board Govern More and Manage Less*, revised edition. Washington, D.C.: Board Source, 2003.
- Dambach, Charles F. *Structures and Practices of Nonprofit Boards*, second ed. Washington, D.C.: Board Source, 2009.
- Flynn, Outi. *Meet Smarter: A Guide to Better Nonprofit Board Meetings*. Washington, D.C.: Board Source, 2004.
- Tesdahl, D. Benson. *The Nonprofit Board's Guide to Bylaws: Creating a Framework for Effective Governance*. Washington, D.C.: Board Source, 2005.

## Chapter 4

# LEGAL RESPONSIBILITIES AND LIABILITY



### *Legal Status of Library Trustees*

As a library trustee, you have become a member of a public body—the board of trustees of a public library. In Illinois law, a public body is defined as a legislative, executive, administrative, or advisory body that expends tax revenue (5 ILCS 120).

As a public servant, you enact the role of a fiduciary—that is, a person who holds something in trust for others. A public library is a community asset that you and the other board members, in your fiduciary role, hold in trust for the public. Violations of that trust could result in legal consequences for you and other trustees. Such violations might include active errors, as for example, exceeding legal authority; or passive errors, as in failing to meet responsibilities to provide a safe, accessible library environment.

Illinois law endows library trustees with specific powers and duties. The Illinois Local Library Act (75 ILCS 5/4) and the Public Library District Act of 1991 (75 ILCS 16/30) summarize powers of library boards of trustees.

At minimum, a library board of trustees holds the following legal obligations:

#### *A Library Board's Basic Legal Obligations . . .*

- To organize the board with written bylaws and elected officers
- To meet regularly in conformance with the Illinois Open Meetings Law (See Chapter 3, “Board Organization.”)
- To provide written minutes of every meeting of the board and its committees and to archive the minutes after approval by the board
- To prepare and maintain audio or video recordings of closed (executive) sessions of the board
- To provide bonding of the treasurer or other person designated by the board to receive and disperse funds
- To submit an annual report to the host municipality, i.e., village, township, or city (for local libraries only; does not apply to district libraries)
- To submit an online annual report in compliance with the requirements of the Illinois

State Library

- To conduct all library business in accordance with federal, state, and local laws

Trustees should become familiar with the following laws and be certain to meet their requirements:

- Americans with Disabilities Act (ADA)
- Fair Labor Standards Act (FLSA)
- Minimum wage
- Prevailing wage
- Family Medical Leave Act (FMLA)
- Health Insurance Portability and Accountability Act of 1996 (HIPPA)
- Drug-free workplace

Trustees and the library director should work with their regional library system, the Illinois State Library, and ILA to monitor new laws or revisions to existing acts.

### **Risks of Liability for Library Trustees**

A library board of trustees has legal status similar to that of a corporation: it can enter into contracts and take title to property under a specific legal name, such as “The Board of Library Trustees of (name of governmental unit).” Like other corporations, the library board can sue—and it can be sued.

So long as a trustee is operating within the lawful authority of his/her position, a trustee will not be held personally liable for his/her actions. However, there is no way to prevent someone from individually initiating a suit against a trustee. For that reason, library boards typically purchase insurance against liabilities related to the public library, and Illinois law specifically authorizes library boards to purchase such insurance. Insurance companies offer policies specifically tailored to protecting public officials. Such policies may be called “directors and officers liability” insurance or “errors and omissions” insurance.

For a sample policy to insure library trustees and staff against liability, go online to the Illinois State Library Administrative Ready Reference, <http://www.webjunction.org/partners/illinois/il-topics/readyref.html>: select **Policy Model**; select **Financial Policies**; select

#### **Indemnification & Insurance.**

Liability may result from injury or harm that a person receives while on library property. If a library patron falls on a slippery floor and breaks an arm, for example, that person might have legal ground to sue the library board for damages. Liability may also result from malfeasance committed by one or more library trustees, in gross violation of trustee fiduciary responsibility. The section of this chapter entitled “Ways to Minimize Risks of Liability” will help you understand how to carry out your board responsibilities properly so as to minimize legal risks.

Trustees may be held liable for actions committed by staff employees. For example, if a staff member destroys library records in violation of Illinois statutes mandating retention of such records, the board could be held legally liable. The same might be true if a staff member commits a discriminatory act against a patron. For these reasons, a library board should carefully and in good faith exercise its responsibility in hiring a library director who understands the legal implications of library administration.

### *Conflict of Interest: An Invitation to Liability*

A situation known as *conflict of interest* arises if any library trustee or trustee relative or associate receives any gain, tangible or intangible, in the course of the trustee’s service on the library board. Conflict of interest is one of the most serious forms of public malfeasance, and

it may be prosecuted criminally. Liability may well extend to board members other than the perpetrator, if there is any appearance of collusion or even passive tolerance.

The following are examples of situations in which there is a conflict of interest.

Example: The library board enters into a contract with a company that will provide a service to the library; a trustee on the board is a relative of the company president.

Example: A library trustee accepts a gift from a person or entity that could have an interest in the conduct of library board business.

Example: The board hires one of its trustee members, an attorney, to provide legal counsel.

Example: The board purchases a lot for library construction from a real estate company with which a trustee is associated.

## *Ways To Minimize Risks of Liability*

Collectively, the board of trustees can conduct its business in such a way as to minimize risks of liability. The following lists summarize steps trustees can take to minimize risks of liability as a board and as individuals.

### ***How The Board Can Minimize Risks of Liability . . .***

- Comply with all provisions of the Illinois Open Meetings Law (5 ILCS 120) to ensure that all meetings, records, and communications meet statutory requirements.
- Comply with the state Officials and Employee Ethics Act (Public Act 93-615 and 93-617), which requires the adoption of an ordinance or resolution regulating political activities and solicitation and acceptance of gifts by library officers and employees.
- Rigorously avoid any conflict of interest, even the appearance of such.
- Ensure that the library is operated in a safe manner. Maintain physical facilities properly. (See Chapter 9, "Facilities.")
- Hire a qualified library director and perform annual evaluations that include a review of staff management.
- Carefully follow any procedures established by the board for the avoidance of personal conflicts and the reporting of ethical violations.
- If aware of a legal or ethical violation, contact the appropriate executive or law enforcement agency.
- If unsure of any legal obligation, seek the advice of an attorney, and when appropriate, consider seeking an advisory opinion from the Illinois Attorney General's office.
- Establish legally defensible library policies. The following are examples of policies that could be construed as indefensible:
  - The library imposes extreme penalties; for example, a patron has library privileges revoked for a minor infraction, such as bringing food or drink into a posted off-limits area.
  - The library engages in a practice that might be viewed as discriminatory, such as enforcing policies differently for identifiable groups (homeless visitors, minority groups, etc.)
- Post library rules and regulations openly.
- Review financial records regularly. Submit financial records to annual audit, as provided for by law.
- Conduct regular audits of meeting minutes. Such audits ensure that these important records are complete, accurate, and approved by appropriate signature(s). An audit of the secretary's minutes is a requirement of the district library's annual report sent to the state library.
- File all mandatory reports promptly.
- Ensure that all library policies and regulations conform to federal, state, and local laws.



- Retain services of an attorney to advise the board from time to time on legal aspects of board business and decisions.
- In board proceedings, follow standard rules, such as *Roberts Rules of Order*.
- Establish library policies and practices to ensure that public queries or complaints will be addressed promptly.
  - For example, if an individual or group within the community protests availability of a particular material, alleging that the material is offensive in some way (for example, obscene), the board's designated representative will respond to the specific complaint. The person so designated—the library director, for example—should be able to mount an effective response based upon codified library policies, law, and public libraries' commitment to freedom of information.
- Review liability insurance coverage annually to determine whether it is adequate.

### ***How You Can Minimize Your Risks of Liability . . .***

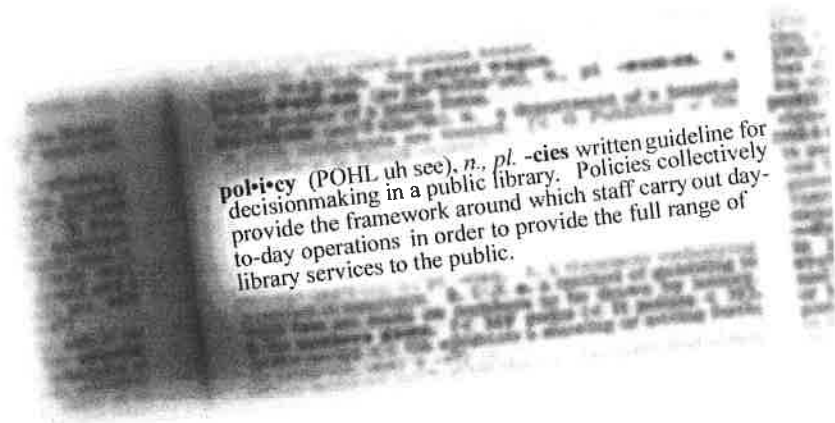
- Carefully avoid all possibilities of conflict of interest.
- If you suspect conflict of interest on the board, make a written record of protest, such as a letter to the board president. Committing your protest to writing may protect you from liability.
- If an issue comes before the board for a vote and you do not yet have the information you need to make a decision, request a tabling of the issue or abstain from voting.
- Review minutes to affirm that they accurately represent your statements and votes. It is especially important that an accurate record of member voting be kept.
- Perform your trustee duties to the best of your ability and in good faith.
- Actively seek information about new or changing laws that will apply to the library.
- If unsure about legal issues, consult an attorney for professional advice.
- Remember that the board operates as a team and not as individuals. As individuals, board members have no authority, except for that specifically delegated by the board.

### ***Resources***

- Hopkins, Bruce R. *Legal Responsibilities of Nonprofit Boards*, second ed. Washington, D.C.: Board Source, 2009.
- Illinois Library Laws & Rules*. Chicago: Illinois Library Association, 2012.
- Minow, Mary and Thomas A. Lipinski. *The Library's Legal Answer Book*. Chicago: American Library Association, 2003.
- Torrans, Lee Ann. *Law and Libraries: The Public Library*. Westport, Conn.: Libraries Unlimited, 2004.

## Chapter 5

# POLICYMAKING



Like other public institutions, a library must endeavor to meet public expectations in a consistent, efficient way. A library with haphazard hours, a disorganized collection, and a confused staff would be of little use to the community. The most important tools with which library trustees and staff provide effective service to the community are written, codified policies. Because the public collectively owns its public library, the library's written collection of policies is made available to all.

More specifically, a comprehensive set of well-defined, well-written policies is important to a public library because it

- guides trustees and library staff in carrying out their duties.
- helps ensure high-quality service to meet community needs.
- communicates privileges and duties regarding library use to the public.
- helps ensure fair treatment of all patrons and staff.
- helps ensure conformity to local, state, and federal laws.

An excellent source for policy models is available on the Illinois State Library website: go online to the Illinois State Library Administrative Ready Reference, <http://www.webjunction.org/partners/Illinois/il-topics/readyref.html>: select **Policy Model**.

### *Policies Versus Procedures*

A policy, as defined above, is a written principle for guiding trustees and staff in providing the full range of library service to the community. A *procedure* is a specification of the steps needed to carry out a specific task. The library board of trustees develops, approves, and codifies all policies, based on input from the library director or other staff. In most cases, effective boards delegate procedural work to the library director and staff. Policies tend to be broad statements of intent, while procedures deal with specifics—the “nuts and bolts.” The following graphic summarizes the differences between policies and procedures.

## Summarizing Differences Between Policy and Procedure

### Policy

Definition: Written statement to guide trustees and staff in providing library service to the public

Example: The library's Green Room shall be made available for public use in one-hour blocks (renewable) on weekends.

Author: Board of Trustees

### Procedure

Definition: Specification of the steps needed to carry out a particular task

Example: The library staff maintains a sign-in book for weekend use of the Green Room and tracks the usage.

Author: library director or other staff (typically)

## *How the Board Makes and Codifies Policies*

The crafting of a specific policy is usually prompted by a specific problem or need. Often, the issue is brought to the board's attention by the library director or other staff member—the people “on the front lines” of library administration. The board discusses an appropriate policy response, writes a policy draft, and revises the draft after further discussion. The board or its appropriate committee also codifies new policies; that is, dates, numbers, and files them appropriately. The following flowchart summarizes the policymaking process.

### Policymaking Flowchart

Identify problem or need  
 Receive staff input  
 Solicit community input  
 Discuss in board meeting  
 Assign to board committee  
 Committee drafts policy statement  
 Board considers policy statement  
 Board approves policy  
 Board codifies policy

## Standards for Policies

Policies can be crafted—and written—well or poorly. Well-designed, well-written policies should

- be stated unambiguously.
- be capable of being applied consistently and fairly.
- be reasonable and capable of being implemented.
- comply with local, state, and federal laws.
- reflect the library's goals and objectives (its mission statement).

See the table “Good and Bad Library Policies” for examples of “good” and “bad” policies.

## Codifying Policies

Because policies should be easily identifiable, each policy should acquire a unique identifier (number) upon board approval. Another important piece of information is the date of approval; identifier and date might be combined in a single code. Most likely the board will

assign to a committee the task of managing policy codification.

All relevant policies should be maintained in online files and collected in an easy-to-update manual. The policy manual should have a table of contents and an index. Both of these features will need to be updated regularly.

Every trustee and every library staff member should receive a copy of the policy manual. In addition, the manual must be made available to the public.

Illinois law requires that important public records be retained by the library for a designated number of years. Policy manuals are included in this category. Contact the Illinois Local Records Commission for more information and assistance. (Illinois State Archives Building, Springfield, IL 62756; phone: (217) 782-7075)

## Changing Policies

It is not at all unusual for libraries to revise policies periodically or even to discard them after a time. Types and levels of service change frequently, due to such factors as rising or falling funding levels or changing community needs.

Some changes in library service are driven by cultural or technological developments. Consider how cultural attitudes to gender and ethnicity have changed since the civil rights movements of the 1950s, 1960s, and later. Recall the changes technology has wrought in your lifetime.

For these reasons, it is vitally important that the library board review policies on a regular basis. One policy your library board will surely want to document is a statement of how frequently it will review policy. *Serving Our Public 2.0: Standards for Illinois Public Libraries* recommends reviewing policies at least every three years.

### **"Good" and "Bad" Library Policies**

#### **Subject of Policy: Loan period for books, Audiotapes**

"Bad" Example: Patrons may borrow books and audiotapes for a period of three weeks or two weeks.

Critique: Stated ambiguously.

"Good" Example: Patrons may borrow books for three weeks. Patrons may borrow audiotapes for two weeks.

#### **Subject of Policy: Loaned materials lost by patrons**

"Bad" Example: Patrons who lose loaned materials may be asked to pay for them.

Critique: Leaves room for inconsistent application and unequal treatment.

"Good" Example: Patrons who lose loaned materials will be charged the cost of the materials.

#### **Subject of Policy: Posting notices on a public bulletin board**

"Bad" Example: The board of trustees will give or deny permission for all postings on the public bulletin board.

Critique: Implementation of the policy is too specific for the board's involvement; board properly establishes the bulletin board policy but does not implement it.

"Good" Example: The library will provide a self-posting public bulletin board; library staff will regularly review postings to remove obsolete items or items that do not conform to board policies.

#### **Subject of Policy: Responding to patron challenges to particular materials**

"Bad" Example: Someone from the library should respond promptly to a patron challenge to particular materials.

Critique: Not specific enough.

"Good" Example: In the case of a patron challenge to particular materials, the board will designate a staff member to contact the patron within 24 hours to explain the library's policy and procedures regarding challenged materials.

**Subject of Policy: Overdue fines**

"Bad" Example: The overdue fine for a book is 5¢ per day; the daily fine doubles every seven days and continues accruing.

Critique: Open to various interpretations; no fine maximum specified; policy may be unfair and counterproductive to the return of materials.

"Good" Example: The overdue fine for a book is 5¢ per day; the fine continues accruing until such time as it exceeds the replacement cost of the book. Patrons will not be charged a fine greater than replacement cost.

## *Areas Addressed by Specific Policies*

The library board, in its policymaking role, must address a wide range of issues. The following list highlights general areas addressed by policies. The list is not intended to be exhaustive; policies not mentioned here may be addressed in the Administrative Ready Reference website, <http://www.webjunction.org/partners/illinois/il-topics/readyref.html>, cited in the opening section of this chapter.

### **Policy Areas . . .**

- A mission statement
- Hours/days of library operation
- Lending rules, including registration for borrowing privileges
- Development and management of the collection
  - Collection development policy establishes guidelines for collection of new materials with recognition of different formats, age levels, multiple copies, and other factors. Guidelines must be issued for how to "weed out" damaged or obsolete materials from the collection. By law, the library board must review the policy for selection of library materials at least every two years (75 ILCS 5/4-7.2; 75 ILCS 16/30-60).
- Level of cooperation or interaction with other libraries or systems
  - Public libraries participate in interlibrary loan and reciprocal borrowing.
- Provision of specialized services
  - For example, libraries provide braille materials and books on tape for visually impaired persons; they may provide special ESL (English as a second language) services for patrons not proficient in English; or they may serve congregate living sites. Each type of service may require policies to guide operations.
- Provision of child-oriented services
  - Libraries may offer storytelling and other special activities for young children that require special policy considerations.
- Policies defining acceptable/unacceptable patron behavior
  - Such policies should be reviewed by legal counsel and include instructions for dealing with problem behaviors.
- Purchasing and disposing of library materials and other assets
- Use of computers and the Internet
- Public use of meeting rooms and display spaces
- Acceptance and use of gifts and memorials
  - See Chapter 11, "Fundraising."
- Public relations, including interaction with local media

- See Chapter 12, "Advocacy," and Chapter 13, "Public Relations."
- Human resources (personnel)
  - See Chapter 8, "Human Resources."
- Continuing education for trustees and staff
  - See Chapter 14, "Trustee Continuing Education."
- Mechanism for responding to patron complaints
  - See Chapter 6, "Intellectual Freedom," Chapter 12, "Advocacy," and Chapter 13, "Public Relations."
- Whether/how to use volunteer services
- Periodic review of all library policies
- Solicitation by outside groups or individuals (such as Girl Scouts selling cookies or petition gatherers)
- Posting of non-library fliers and announcements

## *Resources*

- Baughman, James C. *Policy Making for Public Library Trustees*. Englewood, Colo.: Libraries Unlimited, Inc., 1993.
- Illinois Library Association. *Serving Our Public 2.0: Standards for Illinois Public Libraries*. Chicago: Illinois Library Association, 2009.
- Nelson, Sandra and June Garcia. *Creating Policies for Results: From Chaos to Clarity*. Chicago: American Library Association, 2003.

## Chapter 6

# INTELLECTUAL FREEDOM



So proclaims the First Amendment to the United States Constitution, part of the Bill of Rights—the group of ten amendments protecting personal liberties—ratified in 1791 in the infancy of the United States of America. Since that time, federal and state courts have invoked the First Amendment countless times in a wide variety of situations and have extended freedom of speech and of the press to a broader concept of freedom of information, the right of every citizen to have unrestrained access to all kinds of information. This basic right is also known as intellectual freedom. (A brief glossary of terms relevant to intellectual freedom is appended at the end of this chapter.) At odds with these concepts of freedom of speech, the press, and access to information is the concept that one person or a group of persons may, under certain conditions, deprive access of others to various information. This idea is known as censorship.

### *Library Trusteeship and Censorship*

Public libraries fulfill a unique role in the preservation of our constitutionally grounded democracy. They provide an environment in which all people can explore ideas and pursue knowledge without any government-imposed restrictions or restraints. The existence of such a resource attests to our collective belief that ordinary citizens, relying on their own critical judgment, can and should make their own choices and value judgments.

As a library trustee, you are committed to freedom of information by the oath of office that you took. Steadfastly upholding this freedom is sometimes challenging. You must freely tolerate ideas that may offend your sensibilities or contradict your personal beliefs. You may even be called upon to defend public access to such information. The willingness to do so is the ultimate test of your commitment as a library trustee.

### **The Selection Policy**

Commitment to the principle of unfettered access to information imposes on library trustees and staff the responsibility of choosing materials in as open and unbiased manner as possible. The board of trustees is responsible for shaping a materials selection policy. This policy should include, at minimum, a clear statement of intellectual freedom and delegation of actual selection tasks to the library director or other staff.

In preparing a library materials selection policy, trustees might refer to the following American Library Association (ALA) statements on intellectual freedom (copies of these documents will be found in the Appendices section of the document you are now reading):

- *ALA Library Bill of Rights*
- *ALA Freedom to Read*
- *Freedom to View Statement*

Having a clear written statement of selection principles is a well-grounded first step in dealing with challenges to library materials.

### Why Challenges Occur

Public libraries are repositories of our culture—the good and the bad. In our free society, forces contend and controversies arise. It is not surprising that the public library sometimes becomes a focus for a clash of philosophies and ideologies. People's motivations for imposing censorship may be well intentioned, but the fact remains that censors try to limit the freedom of others to choose what they read, see, or hear. Most censors' objections concern sex, profanity, and racism, and most involve concerns about children's exposure to material in these categories. While the intent to protect children is commendable, censorship itself contains hazards far greater than the "evil" against which the protection is leveled. U.S. Supreme Court Justice William Brennan, in *Texas v. Johnson*, said, "If there is a bedrock principle underlying the First Amendment, it is the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Individuals may restrict what they themselves or their children read, but they must not call on governmental or public agencies to prevent others from reading or seeing that material.

### A Policy to Handle Challenges

It is critically important for library administration to have on hand a written policy for responding to challenges. That policy should document a two-phase response to challenges: the first, by staff, most likely the library director; and the second, an appeal (if desired) to the board of trustees.

Adhering to such a policy ensures that the complaint will be heard, understood, and registered properly; that library representatives will have a satisfactory forum for responding to the challenge; and that complainants will emerge from the challenge process convinced that they have been taken seriously—even if the final decision goes against them.

A sample policy for responding to materials challenges is outlined here. Trustees and staff should receive training in the policy to ensure that all are prepared to handle a challenge if one should come.

### *Policy for Responding to a Challenge . . .*

#### **Phase 1: Library director or other staff responds**

- When an individual complains verbally about a material to a staff member, the staff member directs the complainant to a senior staff member who has been trained to respond to a "Request for Reconsideration" of specific material in the library's collection. The patron should be invited to discuss his/her concerns in a nonpublic area and be thanked for taking time and effort to share them with library staff. At the end of the meeting, the staff member should request that the complainant submit his/her concerns in writing, and the staff member should explain why it is important for library personnel to have a written record of the complaints. Copies of the challenged material remain available to the public during the review process.
- The library director or other designated staff member responds to the complaint within the specified span of time and communicates a decision on the challenged material.



Though the response may be either verbal or written, as appropriate, the staff member should make a written record of the response to file permanently with the submitted written complaint.

### Phase 2: Appeal to the board of trustees

- Members of the public must have recourse to a hearing before the board of trustees if they are not satisfied with the decision rendered by the library director or other staff member. The board or its designated committee should invite the complainant to appear at an open meeting to express his or her concern.
- Within a specified time period after the hearing in an open meeting, the board renders its decision, in writing, to the complainant. The board's decision is final.

Most critically, all library representatives—staff or trustees—must treat the complainant with utmost respect and politeness. The interaction should be regarded as an occasion for exchange of ideas and an educational opportunity.

## Access to the Internet

The medium of the Internet is truly a “brave new world” of mass media. Anyone who doubts its power as a communications medium should consider that many of the biggest news stories in our time filter through the Internet before they hit many of the more traditional media.

As powerful a presence as it is, the Internet has often been characterized as an electronic “Wild West.” Any individual or entity may freely post a website to broadcast any conceivable message, verbal or visual.

For public libraries, the Internet poses a special challenge. Unlike books and audio and video recordings, which are professionally published and reviewed, the Internet bypasses all professional principles of selection. The medium places the burden—or opportunity—of selection entirely on users.

Many parents and other child advocates have expressed concerns that the Internet affords access to material deemed unsuitable or harmful for children. They cite websites that are pornographic in nature or sites that promote hatred and violence. Some of these concerned individuals and associations advocate imposing varying degrees of censorship on Internet use by minors in public libraries.

The ALA, while fully sharing concerns for the welfare of children, opposes any such moves toward Internet censorship. The ALA's position is clearly expressed in the publication, *Libraries and the Internet Toolkit*. To obtain an electronic copy of this publication, go online to the ALA Office for Intellectual Freedom, <http://www.ala.org/alaorg/oif>, and select **Intellectual Freedom Toolkits**. The publication also contains useful guidelines for Internet use addressed to parents, children, and other public library users.

The Illinois Library Association (ILA) asserts that Internet policy is appropriately developed at the level of the local library rather than at the state or federal level.

## Filtering Software

Some telecommunications companies and software manufacturers, responding to a perceived need in the marketplace, have developed filtering software programs. While search engines separate the relevant from the irrelevant, filtering software programs block websites considered “objectionable” according to the manufacturer's own, often undisclosed, criteria.

Companies use filtering software to control what their employees access on the Internet. Parents often use filtering software to limit what their children can access at home.

Filtering software has limitations, however. The software programs are not intelligent enough to evaluate every context in which information is embedded. For example, a filtering

program may block the source websites for these titles, based on identification of the letter clusters s-e-x and n-u-d-i:

- Congress Subpoenas Ex-Secretary
- Photos of Nudibranch Specimens, Also Known as Sea Slugs

On the other hand, purveyors of pornography or other objectionable material on the web quickly adapt and defend against filtering techniques—such that even with filtering software, some of the objectionable material gets through. Filtering software may over time become more discriminating and effective, but it is unlikely ever to be foolproof.

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

The debate about children's access to the Internet entered the political arena by the late 1990s. In 2000, Congress passed, and President Bill Clinton signed, the Children's Internet Protection Act (CIPA).

CIPA ties public libraries' federal grants for telecommunications and Internet funding to implementation of filtering software on all their Internet-enabled computers, with the intent of protecting minors from objectionable Internet-based material. The so-called e-rate program, funded by a federal tax on phone companies (which is passed on to customers of those companies), provides substantial grants to public libraries to enable them to provide Internet service and other technology-based services to patrons. Many public libraries, especially those in rural or disadvantaged areas, depend primarily on this e-rate funding to provide such services.

A lawsuit contested CIPA's constitutionality in the federal courts, and the U.S. Supreme Court ultimately took up the issue. The high court ruled in June 2003 that CIPA is constitutional, but only if adult patrons in public libraries can have filtering software disabled promptly upon their making such a request. This narrow ruling left open the door for further challenges to CIPA.

### **What Does It All Mean for Us?**

As of the publication date of this document in 2012, CIPA is the law of the land. To ensure eligibility for e-rate funding, public libraries must therefore implement filtering software on their Internet-enabled computers. Some library boards have determined that the amount of e-rate money for which they qualify is not sufficient to warrant filtered access to the Internet on all library work stations.

In general, the law requires that the public library craft and write a general policy on use of the Internet. A model of such a policy is available at the Illinois State Library's Administrative Ready Reference. Go online to <http://www.webjunction.org/partners/Illinois/il-topics/ready-ref.html>: select **Policy Model**. Then select **Patron Service Policies**; select **Public Access to Electronic Information Networks**.

### *Patrons' Right to Privacy*

Along with intellectual freedom, states and localities have long upheld library patrons' right to privacy. Specifically, individuals who access information in public libraries are held to have the right to keep private all records concerning such access.

Law enforcement officials may legally gain access to library records by executing a court-issued subpoena, or by obtaining a search warrant from a judge. In Illinois, a law enforcement officer may request registration records without a court order when it is impractical to get an order and there is an emergency where the officer has probable cause to believe that there is imminent danger of physical harm. With implementation of the USA Patriot Act, passed by Congress in the wake of the September 11, 2001, terrorist attacks on the United States, the likeli-

hood of library staff being presented with a search warrant has increased. Provisions of the act lower the threshold of probable cause in the issuance of a search warrant in cases where national security may be involved. Hypothetically, law enforcement officials might wish to access library records of an individual believed to have sought information about making explosives, for example.

Presentation of a search warrant to library staff demands a prompt, orderly response. Legally, authorities have the right to execute a search warrant without delay. However, library and legal experts advise library staff to request a brief delay and immediately seek legal counsel from the library's attorney. At the very least, the attorney should be able to validate the warrant's legality—that it is properly filled out and signed by a judge or magistrate. If the warrant is not properly prepared and signed, it may well not have legal force.

Ideally, the library administration (trustees and library director) will have the opportunity to develop a policy for responding to requests for information from law enforcement authorities before such time as a search warrant may be presented. ALA and other library advocates strongly advise public library administrators to develop such policies and train staff to implement them. An example of such a policy is available online through LLRX.com, a free web journal that provides information for administrative professionals including library professionals.

## Resources

The American Library Association maintains a broad program for the promotion and defense of intellectual freedom. The ALA Intellectual Freedom Committee recommends policy to the ALA Council and sponsors educational programs.

The ALA Office for Intellectual Freedom (OIF) implements policy concerning the concept of intellectual freedom as embodied in the *Library Bill of Rights*. The OIF provides advice and consultation to individuals and libraries in the throes of potential or actual censorship controversies. The office provides reviews and information about the author of the challenged materials, applicable ALA policies, advice about the implementation of reconsideration policies, and other counsel specific to the situation at hand.

If needed, the OIF will provide a written position statement defending the principles of intellectual freedom in materials selection. As requested, the OIF provides the names of persons available to offer testimony or support before library boards. The options chosen are always the prerogative of the individual requesting assistance. The office maintains an active website ([www.ala.org/oif](http://www.ala.org/oif)) with many practical materials and suggestions to help cope with challenges.

The Freedom to Read Foundation ([www.ftrf.org](http://www.ftrf.org)) was incorporated as a separate organization in 1969 by ALA to act as its legal defense arm for intellectual freedom in libraries. The foundation's work has been divided into two primary activities: 1) the allocation and disbursement of grants to individuals and groups primarily for the purpose of aiding them in litigation; and 2) direct participation in litigation dealing with freedom of speech and of the press.

The Illinois Library Association has an Intellectual Freedom Committee, which also provides support to those facing potential or actual censorship controversies. The committee is also charged with working with other organizations to build a state coalition in defense of intellectual and academic freedom. The current chair and committee members are listed on the ILA website ([www.ila.org](http://www.ila.org)).

For current topics, see:

<http://www.ila.org/committees/intellectual-freedom-committee>

<http://www.ila.org/advocacy/banned-books>

## Specific Titles

- Doyle, Robert P. *Banned Books*. Chicago: American Library Association, 2010.
- \_\_\_\_\_. "Confidentiality: A Case Study in Progress," *ILA Reporter*, February 2005, pp. 18-23.
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- Nye, Valerie and Kathy Barco. *True Stories of Censorship Battles*. Chicago: American Library Association, 2012.
- Office for Intellectual Freedom. *Intellectual Freedom Manual*, eighth ed. Chicago: American Library Association, 2010.
- Pinnell-Stephens, June. *Protecting Intellectual Freedom in Your Public Library*. Chicago: American Library Association, 2012.

## Intellectual Freedom Terms

Intellectual freedom is the right of every individual to both seek and receive information from all points of view without restriction. It provides for free access to all expressions of ideas through which any and all sides of a question, cause, or movement may be explored. Intellectual freedom encompasses the freedom to hold, receive, and disseminate ideas.

At the 1986 American Library Association (ALA) Annual Conference, the ALA Intellectual Freedom Committee adopted the following operative definitions of some terms frequently used to describe the various levels of incidents that may or may not lead to censorship.

**Censorship:** A change in the access status of material, made by a governing authority or its representatives. Such changes include: exclusion, restriction, removal, or age/grade level changes.

**Expression of Concern:** An inquiry that has judgmental overtones.

**Oral Complaint:** An oral challenge to the presence and/or appropriateness of the material in question.

**Public Attack:** A publicly disseminated statement challenging the value of the material, presented to the media and/or others outside the institutional organization in order to gain public support for further action.

**Written Complaint:** A formal, written complaint filed with the institution (library, school, etc.) challenging the presence and/or appropriateness of specific material.

The following definitions are from: Peck, Robert S. *Libraries, the First Amendment, and Cyberspace: What You Need to Know*. Chicago: American Library Association, 1999.

**Child Pornography:** Special category of sexual material that the U.S. Supreme Court has said can be prohibited in the interest of preventing commerce in the abusive use of children as subjects of pornography.

**Fighting Words:** Those words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace." Such words must be uttered as a direct personal insult in a face-to-face confrontation and are calculated or highly likely to result in an immediate violent physical reaction.

**Hate Speech:** This category of "speech" receives considerable constitutional protection because the government cannot prescribe which thoughts we can think or which political philosophies we can advocate. The U.S. Supreme Court has said that the "fighting words doctrine" is not a tool to cleanse public debate or regulate words that give offense.

**Libel:** A written libel or an oral slander defames an individual and has the effect of ruining that person's reputation, standing in the community, or ability to associate with others. Because of the adverse economic consequences that false accusations can have, the courts can award damages to compensate an individual injured by those false accusations. By contrast, truthful yet harmful accusations incur no similar damage and are not actionable.

**Nudity:** Obscenity and nudity are not synonymous. Although obscene materials, which is a very narrow category of hardcore sexual acts that have a tendency to excite lustful thoughts, can be illegal, a law that prohibited the circulation or exposure of materials that

contained nudity would not be constitutional. In fact, in 1975, the U.S. Supreme Court struck down a law that banned nudity in movies shown in drive-in theaters when the screen was visible from the street.

**Obscenity:** To be obscene, a court or jury must determine that 1) the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; 2) the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable law; 3) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

**Pornography:** In legal terms, obscenity and pornography are not synonyms. Pornography is a form of protected speech. The U.S. Supreme Court has recognized that erotic messages are within the First Amendment's protections. The court's obscenity decisions comprehend that sex is a subject in well-regarded literature and art and a mysterious force that commands great human attention. The court therefore decided that society's concerns about obscenity should not be a vehicle to interfere with serious artistic or scientific endeavors.