

LibraryLaw Blog

Issues concerning libraries and the law - with latitude to discuss any other interesting issues Note: Not legal advice - just a dangerous mix of thoughts and information. Brought to you by Mary Minow, J.D., A.M.L.S. [California, U.S.] 

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June 20, 2005

When can you digitize old newspapers?

I got this question at the very end of the [Digital Reference Legal Issues](#) webcast, and we'd already cut off the connection. It's actually a very complicated answer, and I hereby refer to [this reply](#).

Posted by Mary in [Copyright](#), [Digitization Projects](#) | [Permalink](#) | [Comments \(0\)](#)

Lyrics and digital reference

At the [Digital Reference Legal Issues webcast](#) last week, I was asked whether libraries can scan copyrighted lyrics from a book to answer virtual reference questions. I ducked it until I could doublecheck the definition of "musical work."

I've done some digging, and this is my reply (subject to the usual caveats – i.e. check with your institution's lawyer...) If anyone else wants to weigh in [here](#), go ahead.

[Continue reading "Lyrics and digital reference "](#)

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June 17, 2005

Breaking News: Google / Univ of Michigan Digization contract available now

Dear Mary Minow:

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The U of Michigan has posted their confidential agreement with Google in response to my freedom of information request. See the link at the top of www.google-watch.org/appeal.html

I have some observations after reading this thing. Either the U of M decided that Google deserved a big fat Christmas present last December, or U of M's lawyers all had hangovers from a Christmas party.

Google gets to do anything it wants with the public domain material it digitizes, and U of M cannot do anything with this material other than use it on their own website, assuming that measures are taken to prevent crawling, scraping, or other types of automatic retrieval. As for copyrighted material, Google decides what is "fair use" and what isn't, and U of M is out of the picture.

The only place where I saw the word "privacy" in the [agreement](#) is here:

"4.5.2 Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from a user of the Google Search Services."

That is absolutely worthless. We know this because every privacy policy Google has published on their website is absolutely worthless. Every single one is full of loopholes, assuming you can find anything concrete in them to begin with.

This was interesting:

"6.3 Confidentiality (Exceptions) Google understands that U of M, as a public institution, is subject to the Michigan Freedom of Information Act, and any disclosure of Confidential Information required by that statute will not constitute a breach of this agreement."

The whole agreement was confidential. The U of M is the only one of the five libraries that is not private, and subject to government regulation. Clearly, Google was hoping that no one would notice. They were almost right -- it was nearly five months before I decided to search for "freedom of information" and "university of michigan." Shame on me, and even more shame on everyone else. But the most shame on Google and the U of M, who should have taken one look at the situation and decided to skip all the confidentiality language from the start.

This is, after all, clearly a public policy issue. Remember, Google is on a mission from God to organize all the world's information. That's just about as public as you can get.

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-- Daniel Brandt

Posted by Mary in [Digitization Projects](#), [Privacy](#) | [Permalink](#) | [Comments \(2\)](#)

Open Access Law Program, a part of the Science Commons publishing project, supports "open access" to legal scholarship

Cool - there's now an [Open Access Law Program](#), publishing free access to scholarly literature "without undue copyright and licensing restrictions."

Courtesy of private email from [Sam Trosow](#) (reprinted with permission):

I don't know if you've seen this, but it's no doubt something your readers will be interested in: <http://science.creativecommons.org/literature/oalaw>

Posted by Mary in [Copyright](#) | [Permalink](#) | [Comments \(0\)](#)

June 15, 2005

news flash on libraries and patriot act - Sanders' amendment passes

From [Bernie Sanders' site](#):

Sanders Passes Critical Legislation to Amend Patriot Act and Protect Americans' Reading Records

Washington, DC—Congressman Sanders today led a tri-partisan coalition in restoring Americans' constitutionally guaranteed right to read and access information without governmental intrusion or monitoring. With 199 Democrats, 38 Republicans and one Independent (Sanders) voting in support, the House passed Congressman Sanders legislation to amend Section 215 of the Patriot Act in order to keep the federal government from accessing Americans' reading records without a traditional search warrant.

Can someone tell me how many are needed to stop a presidential veto?

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Orphan works

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Posted by Mary in [PATRIOT Act](#) | [Permalink](#) | [Comments \(3\)](#)

Wyoming expands its library confidentiality law

Now that's refreshing - effective July 1, Wyoming library *patron transactions* will be protected by law insted of just patron *circulation* and registration records (subject to established exceptions).

An elegant update to reflect changing times - new wording would include virtual reference and other new patron transactions. Nice.

How about it, California librarians? Any readers from Wyoming want to comment?

I saw this thanks to the great [state library laws](#) list by Paul Neuhaus which he keeps updating.

Introduced: 2005 H.B. 0316 (January 25, 2005)

Status: Signed into Law on March 3, 2005; Becomes effective July 1, 2005

Sponsors: Representatives Esquibel & Walsh and Senator Boggs

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(ix) Library [~~Delete: circulation~~] [**Add: patron transaction**] and registration records except as required for administration of the library or except as requested by a custodial parent or guardian to inspect the records of his minor child;

Posted by Mary in [Patron Records](#), [Privacy](#), [State laws](#) | [Permalink](#) | [Comments \(2\)](#)

June 13, 2005

Disappearing Government Information - New paper by Susan Nevelow Mart

You can download it for free from SSRN. Susan Nevelow Mart, [Let the People Know the Facts: Can Government Information Removed from the Internet be Reclaimed](#) posted June 13, 2005

Abstract:

This article examines the legal bases of the public's right to access government information, and examines and analyzes the types of information that have recently been removed from the Internet and the rationales given for the removals. The concerted use of FOIA by public interest groups and their constituents is suggested as a possible method of returning the information to the Internet. There article concludes with a brief review of recent FOIA cases that might provide some guidance on the litigation sure to follow such concerted requests.

Posted by Mary in [Access to information](#) | [Permalink](#) | [Comments \(0\)](#)

June 10, 2005

Once Again - the Freedom to Read Amendment

According to the [Campaign for Reader Privacy](#), next week [Rep. Bernie Sanders](#) (I-VT) will try again to pass his Freedom to Read Amendment, when the House of Representatives is due to consider the House Commerce, Justice, State (CJS) Appropriations Bill, which funds the Justice Department. The Sanders amendment would cut off funds for bookstore and library searches under Section 215 of the USA PATRIOT Act. This last time the [Freedom to Read Act Amendment](#) was introduced, it was [defeated in a tie](#) vote. The Amendment to the Justice Department's funding bill was originally 219-200 in favor of the amendment, but the the House leadership changed enough votes to bring the tally to a 210-210 tie. The vote was close last time, so this is the time to send a [letter or e-mail to your representative](#).

Posted by Susan Nevelow in [PATRIOT Act](#), [Patron Records](#), [Privacy](#) | [Permalink](#) | [Comments \(0\)](#)

Digital reference - legal issues webcast on Thursday

California librarians are invited to tune in Thursday at noon pacific time to my Infopeople webcast on digital reference legal issues.

Anyone else can download handouts and look at the archived webcast a little later.

<http://infopeople.org/training/webcasts/06-16-05/>

Posted by Mary in [Virtual reference](#) | [Permalink](#) | [Comments \(0\)](#)

June 03, 2005

[Anonymous library cards / Ostrowsky](#)

[Slashdot](#) has lengthy comments on an [article proposing anonymous library cards](#), written by Ben Ostrowsky, systems librarian at the Tampa Bay Library Consortium.

Privacy minded users deposit \$20 to get a card - and money is deducted when they check out materials. Once the materials are returned, the money is restored.

Fascinating idea - I know I typically check out hundreds of dollars of stuff at a time ... and at first blush I thought this would be too limiting because the card would be too expensive for me.

But having the privacy card option is very appealing, since I could still check out bestsellers and expensive art books on my identifiable library card. But I could also check out that book that I don't want anyone to know I'm reading - by using my privacy card. Add self-checkout machines to the mix, and no humans connect me to the book - great!

I often use a small library and request books from other branches. Could I still do this? I suppose I could, as the privacy card could still have a barcode. If requesting from a home computer, you'd have to mask the IP address of the computer you're using with an anonymizer.

It would set up a two-tier system - those that can afford privacy have that option while others don't. Yet anyone can still go to the library and read the books there free. And get this, it seems to me that for as little as 25 cents you could get a privacy card, giving you unlimited access to request books from other libraries - delivered to your branch to then read in-house for free.* This might even help homeless patrons at the libraries that require an address to get an identifiable library card.

And for a no cost option (that is, no cost to users), see Pam Davis, "The honor system: a library encourages kids to take books without checking them out," *School Library Journal*, (March 2004), for a successful experiment with anonymous checkout in a school.

*This assumes that the library gets books from other branches free for users with cards. Mine does.

Posted by Mary in [Privacy](#) | [Permalink](#) | [Comments \(3\)](#)

June 02, 2005

The list of library law folks grows by one ... Eli joins in

She's done it. [The Mad Librarian goes to law school](#) this fall! Santa Clara University, hear hear - with its excellent high tech program in Silicon Valley.

Welcome, Eli Edwards! (Though you've already been an important part of the discussions thus far ...)

While we're at it - let's gather names of other library law folks. Add them to the comments in this post. It would be useful (dangerous?) to congregate.

If you are someone (or know someone) with both a law and a library background, and are interested in copyright, privacy, free speech and/or related topics, add a name to the comments.

Posted by Mary | [Permalink](#) | [Comments \(4\)](#)

June 01, 2005

The time is NOW to fax your Senators and Congresspersons to support digitization projects

If you care about getting money to digitize library materials, send a fax or email to your Senators and Congresspersons right **now**, supporting DO-IT legislation, just introduced in the House and the Senate. DO-IT says that Congressional leaders will be reaching out to their Senate and House colleagues **next week** to get co-sponsors to House ([HR-2512](#)) and Senate ([S. 1023](#)) bills. Here are sample letters to [House](#)

[Representatives](#) and to [Senators](#). Actual examples are here [1](#), [2](#), [3](#).

If your reps are on the [House Commerce Committee](#) or the [House Education and Workforce Committee](#), the [Senate Commerce Committee](#) or the [Senate HELP Committee](#), they are especially important... click on the committee, and then your member to get contact info. Then do it - send your support for this legislation that will help fund library and education digital projects.

Congressman Ralph Regula of Ohio, a senior Republican appropriator and longtime DO IT champion, joined Ed Markey (D-MA) and Paul Gillmor (R-OH) to introduce HR-2512 on May 19th. Senator Conrad Burns (R-MT) joined Senators Dodd (D-CT), Snowe (R-ME) and Durbin (D-IL) in introducing S. 1023 on May 12th. These are folks to **THANK!**

Here's [quick background](#). More at [Digitalpromise.org](#)

Posted by Mary in [Digitization Projects](#) | [Permalink](#) | [Comments \(2\)](#)

May 25, 2005

Church Meetings in the Library

Faith Center Church Evangelistic Ministries applied to hold church services in the Contra Costa County (Antioch branch) public library's meeting room, and was turned down. Faith Center sued, and District Court Judge Jeffrey S. White granted a preliminary injunction on May 23rd, requiring the library to allow four-hour church services to be held one Saturday every other month, as the Faith Center had made the requisite showing that they were likely to prevail on the merits. The court enjoined the library from enforcing its "Religious Use Policy," which initially provided that "library meeting rooms shall not be used for religious purposes," but was amended during the suit to prohibit using library meeting rooms "for religious services or activities." The policy was amended again, so that it now prohibits the use of library meeting rooms "for religious purposes." According to documents filed in the case, using library meeting rooms for church services is using the facilities for "religious worship," and as such is properly excluded from using the library's meeting rooms. According to the [San Francisco Chronicle](#), Supervisor John Gioia said the meeting room policy was "important to taxpayers who didn't want to subsidize the services."

While meetings that concern religion are clearly protected, what about having

religious services in the library? The plaintiffs relied on [Good News Club v. Milford Cent. Sch.](#), 533 U.S. 98 (2001), a case that allowed after school instruction based on religion, as the instruction fit within the general policy of the after-school program, including fostering good morals. Is a full on religious service the same thing? We are about to find out.

Posted by Susan Nevelow in [First Amendment](#), [Meeting Rooms](#), [Displays](#), [Public Forums](#) | [Permalink](#) | [Comments \(3\)](#)

May 24, 2005

End of Fair Use E-reserves?

[Electronic / e-reserves](#) have become an integral part of college life -- allowing professors and librarians to make materials easily accessible to students -- without the physical limitations of location or size of materials. You may have read recently about the concerns of the Association of American Publishers (AAP) of colleges and universities, as expressed in a [letter](#) (not legal action) sent to the University of California San Diego claiming that e-reserves violate "fair use" and thereby cut sales.

It would be a shame if using this technological option would preclude applying fair use analysis to e-reserves in the future. For many on-campus students, using e-reserves is a convenience -- but for online students, such as the [LEEP library school program](#) at the University of Illinois, they are often a [necessity](#) to receive required reading materials. As professors and librarians have worked together to make e-reserves available to students, hopefully these two powerful groups can continue to ensure students are able to use e-reserves. Strong educational fair use arguments can be made, particularly when e-reserves are used by professors to offer spontaneous, current reading and when the copies are behind firewalls with password-only use.

[Continue reading "End of Fair Use E-reserves?"](#)

Posted by Raizel in [Copyright](#) | [Permalink](#) | [Comments \(2\)](#)

Chart summary of orphan works proposals

Wow - University of California has [analyzed orphan works proposals](#) piece by piece. Be SURE to look at Appendix B - a chart summary.

Posted by Mary in [Copyright](#) | [Permalink](#) | [Comments \(0\)](#)

May 23, 2005

Changes to Patriot Act? Redlined version of Section 215 here

The Electronic Frontier Foundation [posted](#) a draft Patriot Act bill dated May 13, 2005. EFF says that the Senate Select Committee on Intelligence will consider this bill in closed session on Thursday May 26th. The bill would repeal sunset provisions of the Patriot Act -- and it also makes some changes to the so-called "library records" provision.

Libraries were not mentioned in the original Section 215 - the provision applies to *any entity*. In fact, I've always been surprised that news reporters haven't written about how it applies to them as well. Libraries *are* mentioned in an expanded accountability provision in the draft bill, requiring that Congress get a report on the number of times the provision is used to get tangible things (such as records) from libraries.

I pulled out the current law and [marked it up](#) with the proposed changes. It's impossible to read bills like this out of context.

For discussion on the proposal to broaden administrative subpoena authority [which would also affect library patron records] see Philip Carter's [Intel Dump](#).

Notes: The provision at issue in the draft bill is numbered Section 211. It would modify the business records section of the Foreign Intelligence Surveillance Act (FISA), which is at 50 U.S.C. 1861-1862. Section 215 of the Patriot Act section originally broadened that portion, known as the "business records" provision of FISA. Most folks that I know still call that portion of FISA "Section 215."

Also, the EFF summary is dated May 11th - but is still applicable to the May 13th draft that I read, at least with respect to Section 215 (as revised by the draft's Section 211.)

Posted by Mary in [PATRIOT Act](#) | [Permalink](#) | [Comments \(1\)](#)

May 22, 2005

Update on a rabbi's oral history defamation lawsuit: is a one-year statute of limitations long enough?

No, not when there are only a few copies in a couple of libraries . . .

A California appellate court recently reversed a [ruling](#) against Rabbi Pinchas Lipner and the Hebrew Academy of San Francisco, saying that his defamation action was *not* barred by the state's one year statute of limitations. Why? Because the alleged libel was "hidden or beyond what the ordinary person could be expected to immediately detect or comprehend."

The court looked at the number of copies available, noting three copies at the Bancroft, one at the Charles E. Young Research Library at UCLA, two copies at the New York Public Library, two at the Magnus Museum in Berkeley and one at Temple Emanu-El in San Francisco.

Although the Bancroft Library made copies of the oral history "available" to other libraries, the record established that only two, the New York Public Library and the Charles E. Young Research Library at UCLA, ever requested or were actually provided a copy.

The record did not indicate whether the New York Public Library made the document generally available to the public or whether any user of that library ever requested a copy. The Charles E. Young Research Library is not unrestrictedly open to the general public, but primarily serves the research needs of faculty and graduate students. *Hebrew Academy of San Francisco et al, v. Richard N. Goldman*, 2005 Cal. App. LEXIS 765 (May 12, 2005) [PDF](#) or [DOC](#)

Posted by Mary in [Court cases](#), [Liability](#) | [Permalink](#) | [Comments \(0\)](#)