

# Intellectual Freedom on the Internet: It's Global, It's Academic

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Unfettered access to information, regardless of national borders, has become a key issue for academic libraries since the rise of the Internet. ACRL's "Core Values" in "Charting our Future: ACRL Strategic Plan 2020" includes #1: "ACRL . . . is open to . . . global perspectives," and #6, "ACRL is dedicated to the values of . . . intellectual freedom and to upholding the Library Bill of Rights."<sup>1</sup> ACRL's "Intellectual Freedom Principles" further state that "open and unfiltered access to the Internet should be conveniently available to the academic community . . . Content filtering devices and content-based restrictions are a contradiction of the academic library mission to further fundamental violation of intellectual freedom in academic libraries."<sup>2</sup>

This presentation underscores the importance of ACRL and its membership becoming even more engaged in the issues of global freedom of expression and privacy. I will review intellectual freedom principles and structure within the United States library profession. I will then move to FAIFE, the intellectual freedom component of IFLA (International Federation

of Library Associations and Institutions). In the interest of time and focus, I will concentrate on the global intellectual freedom issues in regard to the Internet. My purpose is to demonstrate why it is crucial that academic libraries be at the table.

## **I. American Library Association's Intellectual Freedom Structure**

The pervasiveness of intellectual freedom issues, policies, and organizational structure on the American Library Association web site demonstrates the centrality and priority given to intellectual freedom within the premier national association for U.S. librarians. ALA maintains the Office for Intellectual Freedom in Chicago, solely dedicated to these issues. Programs include the popular "Lawyers for Libraries" seminars held regularly for attorneys to understand First Amendment law as it applies to libraries. The Leroy Merritt Fund provides financial assistance to librarians who lose their job over First Amendment issues. The web site is one of the best in the country for

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background on such legal issues as those surrounding the USA Patriot Act.

The association's membership policymaking body is the Intellectual Freedom Committee, a committee of ALA Council. The "grass roots" membership organization is the Intellectual Freedom Round Table. At the divisional level, ACRL supports an Intellectual Freedom Committee to focus on how freedom of expression principles affects the particular concerns of academic libraries. The "Intellectual Freedom Principles in Academic Libraries" cited above was endorsed by the American Association of University Professors in 2000.

The Freedom to Read Foundation, housed at ALA Headquarters, supports freedom of expression nationwide through educational and legal activities. For example, the Foundation developed the successful strategy for the 1997 overturning of the Communications Decency Act (*Reno v. American Civil Liberties Union et al.*, [117S.Ct.2329]), a law that would have had a chilling effect on libraries' provision of information via the Internet.

At this point I must insert an invitation for your participation in ALA's intellectual freedom activities. The issues are huge but very stimulating; they are truly "global" in scope. Academic libraries are still under-represented in ALA intellectual freedom activities, though that has improved since the establishment of the ACRL Intellectual Freedom Committee in the 1990s. Some of our colleagues still view intellectual freedom as a public library issue, and that is simply not the case. Library technology and the Internet have given rise to a multitude of academic library issues in regard to privacy and broader freedom of expression issues.

The Library Bill of Rights, adopted in 1948, and all its subsequent Interpretations, are the American Library Association's adaptation and application of the U.S. Constitution's Bill of Rights, though it is not a legal document.<sup>3</sup> The Interpretations are crucial, precisely because such phenomena as the Internet have radically changed delivery of library information and have their own set of potential problems in the realm of free flow of information. Over the years the Intellectual Freedom Committee has heard the membership loudly and clearly in regard to policies being "relevant to the real world," so the committee now includes *FAQs* for guidance on policy implementation.

One of the most important intellectual freedom policies relating to the Internet is "Access to Electronic Information, Services, and Networks," with a very practical Q&A attached, including such questions as: "How can libraries impact vendors/network providers/licensors when they attempt to limit or edit access to electronic information?" Answer: "When purchasing electronic information resources, librarians should conduct contract negotiations with vendors to ensure the least restrictive access in current and future products." And another example: "Our library is just one of many autonomous institutions in a consortium. How can we be sure that our cooperating partners honor the confidentiality of our library users in a shared network environment?"<sup>4</sup>

It is important to view ALA's intellectual freedom structure and policies within a global context. For example, the ALA web site makes it clear that the First Amendment to the U.S. Constitution is the basis for the ethical and legal principles upheld by the U.S. library profession. Some of the Interpretations cite U.S. Supreme Court decisions. This type of reference will differ from country to country, depending on the national legal culture and the professional library culture as well. In recent years IFC policies have increasingly referred to international legal documents, and have a web section devoted to the international connection. The "Access to Electronic Information" interpretation begins thus: "Freedom of expression is an inalienable human right," suggesting relevance beyond U.S. boundaries. And, in 1991 ALA Council adopted the interpretation, "The Universal Right to Free Expression," which quotes the Universal Declaration of Human Rights, adopted by the UN General Assembly. Article 19 is particularly important to libraries: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."<sup>5</sup>

## II. Enter an Internet dilemma that crosses the above mentioned frontiers—the very kind of issue that requires us to look at Internet freedom of expression issues from a global perspective.

The legal cases are still making their way through the courts, but I will refer to all of them by one title, *Yahoo! V. La Ligue Contre Le Racisme et L'Antisemitisme (LICRA)*, (145 F. Supp.2d 1168[N.D.Cal.2001]).<sup>6</sup> At

least two French nongovernmental organizations are dedicated to the eradication of anti-semitism. In April, 2000, LICRA sent a “cease and desist” letter to Yahoo!, which is a U.S. corporation located in California. The letter informed the company that the sale of Nazi and Third Reich related articles through its online auction services violated French law, and asked Yahoo! to prevent French citizens from accessing web sites and searches that might contain extracts of such anti-semitic literature as *Mein Kampf*, and auction sites selling such materials.

When Yahoo! refused to comply, a French court entered an order in May, 2000, to require Yahoo! to comply and to post a warning to French users that if, in their searching, they viewed such material they were subject to criminal prosecution; and, finally, that all browser directories and hypertext links with the heading, “negationists,” be removed. When Yahoo! protested that it was technologically impossible to comply with some of the order’s requirements, the French court increased the amount of the penalty for noncompliance on the part of Yahoo!, which was a daily fine.

I won’t summarize all the litigation here; the case is pending before the Ninth Circuit Court of the Northern District of California. You can imagine the legal dilemmas facing Yahoo! As a U.S. corporation, they are subject to U.S. law, including the First Amendment. On the other hand, U.S. courts generally recognize foreign judgments “unless enforcement would be prejudicial or contrary to the country’s interests.” To quote the court further: “What makes this case uniquely challenging is that the Internet in effect allows one to speak in more than one place at the same time” and that “although France has the sovereign right to regulate what speech is permissible in France, this Court may not enforce a foreign order that violates the protections of the U.S. Constitution by chilling protected speech that occurs simultaneously within our borders.”<sup>7</sup>

The case was appealed to the Ninth Circuit and in May, 2002, the Freedom to Read Foundation joined an amicus brief in support of Yahoo! ALA argued that enforcement of the French court order in the U.S. would fundamentally change the nature of the Internet and is repugnant to public policy.

The Yahoo! case is just the beginning. It illustrates the heated discourse among legal scholars currently regarding Internet law and freedom of expression.

Does the Internet necessitate a revision of free speech laws due to the particular nature of Internet communication? The Internet is anti-spatial; it can be read by lots of people at the same time in different countries, its content constantly changes, its size can’t be measured, it crosses national boundaries, and nobody administers it.<sup>8</sup>

Here is a real-world example of a potential problem. A U.S. academic is invited to a conference in a country where certain speech or images are illegal, but are legally protected in the U.S. This academic posts Power Point slides before the conference, on a web site accessible to academics all over the world, but these images are illegal in some countries. What would happen to that academic when he/she tries to enter that country? Could he/she be refused entry? Could he/she be arrested?

These are just examples of why an international library committee like FAIFE is so critical in the Internet age.

### III. IFLA’s Intellectual Freedom Structure

FAIFE (Freedom of Access to Information and Freedom of Expression), was founded by the IFLA Council in 1997 when IFLA, in its 70<sup>th</sup> year, recognized that intellectual freedom should be a “core activity” of the organization. FAIFE’s activities and principles are based on the previously cited Article 19 of the UN Charter. In addition, FAIFE began addressing the subject of professional ethics and codes of conduct at the 2002 Berlin meeting in a workshop, “The Librarian: The Key to Open and Closed Collections and Issues on Ethics of Librarianship.” The mission and activities of FAIFE are clearly presented on the IFLA web site at [www.ifla.org/faife/index.htm](http://www.ifla.org/faife/index.htm).

Like the ALA *Library Bill of Rights*, FAIFE’s *Statement on Libraries and Intellectual Freedom* is based on a legal document—in this case, the UN University Declaration of Human Rights—and provides core intellectual freedom values for the library profession worldwide.<sup>9</sup>

FAIFE’s mission includes the “monitoring of the state of intellectual freedom within the library and information community worldwide, supports IFLA policy development and cooperation with other international human rights organizations, and responds to violations of freedom of access to information and freedom of expression.” FAIFE’s organizational structure includes a Chair, Advisory Board, Committee, and

Office. The IFLA Governing Board appoints the Chair and committee members for 3 years, with possibility of reappointment. The committee is large—23 members—and is appointed by the IFLA Governing Board to assure equitable geographic representation.

[I am often asked how one penetrates IFLA to get appointed to committees. IFLA operates somewhat differently than ALA, where one can often get on a committee informally or by responding to a call from one of the section newsletters. At IFLA, the best strategy is to attend a conference and then network, network, network with colleagues. Leadership activity in ALA, especially in international relations, is another important way to move into IFLA. You might also search the IFLA web site for calls for papers.]

The FAIFE committee works primarily through email, which may prove difficult for some committee members who have minimal access to the Internet. The committee hails from all over the world, including Uganda, Germany, Korea, Kazakstan, Denmark, Hong Kong, Kosovo, the Russian Federation, Canada, and Cuba. One of the most rewarding aspects of this assignment is meeting other colleagues and gaining perspectives of their particular intellectual freedom issues. In fact, their comments are an integral part of this section of my presentation.

Some recent FAIFE activities include excellent programs at the IFLA annual meeting. At the 2004 Buenos Aires conference, South American librarians and human rights attorneys spoke about the impact of dictatorship on library collections in three countries. At the Boston meeting, a small-group workshop focused on those censorship issues librarians find most personally problematic. In my group, I was made acutely aware that blasphemy is still a huge legal issue affecting libraries in many parts of the world, while U.S. librarians worry more about sexually explicit information. “Blasphemy” and “sexually explicit” are culturally relative terms, and it is important for librarians working in the international arena to understand that. It is also important to acknowledge that self-censorship of collections by librarians is an issue not only in the United States, but in all countries. Even though the library profession is guided and supported by policies and ethics regarding censorship, such as Article 19, one’s personal preferences and the threat of governmental sanctions inevitably play a role in the development of library collections and services.

FAIFE also publishes the *World Report Series*, which is comprised of two publications. The *IFLA/FAIFE World Report* is published bi-annually, and the *Summary Report* in alternate years. The *2002 Summary Report* addresses Internet use head-on: *Libraries, Conflicts, & the Internet*.<sup>10</sup> Stuart Hamilton’s compelling “An Overview of Global Internet Access Barriers” differs somewhat in emphasis from United States library policy in regard to Internet access. In addition to the problem of repressive governmental regimes, Hamilton underscores the problem of the control of information flow being subsumed by corporations, and the resultant danger when information is treated as a “commodity.” This issue will only grow in importance with the growth of multinational corporations and consolidation of media outlets.

The 2003 report provides excellent documentation of Internet access in academic and research libraries in dozens of countries.<sup>11</sup> The data itself reveals why IFLA/FAIFE focuses so keenly on the problem of “information haves and have nots.” It becomes a global library access problem when Austria maintains 81-100 percent Internet access in its research libraries but Iran only 21-40 percent; Kuwait, 81-100 percent but Azerbaijan, 20 percent.

Like ALA’s intellectual freedom organizations, IFLA’s FAIFE has issued policy statements like the “Internet Manifesto.”<sup>12</sup> This important document was prepared by FAIFE and approved by the IFLA Governing Board in 2002. It is available in seventeen languages thus far. It begins: “Libraries and information services are vibrant institutions that connect people with global information resources and the ideas and creative works they seek. Libraries and information services make available the richness of human expression and cultural diversity of all media.” It underscores the importance of protecting user privacy. One very interesting principle addresses the issue of incorrect, misleading, or offensive Internet content and offers the following strategy: “Librarians should provide the information and resources for library users to learn to use the Internet efficiently and effectively.” This statement assigns librarians a crucial role in helping users to use Internet information with critical discernment, regardless of cultural attitudes toward particular content. For an international library organization grappling with a diversity of opinions, this strategy seems extremely wise. As the committee works on global implementa-

tion of the manifesto, substantive differences might arise. Thus it is important that FAIFE continue to write policies with clearly stated principles, but with room for different implementation strategies and timelines from country to country.

IFLA/FAIFE is holding a mid-term meeting in The Hague in March 2005. This will be a critical meeting, because FAIFE—in fact IFLA itself—is undergoing significant changes in its organizational and budgetary structure. It is fair to say that FAIFE is a young organization and there have been some “growing pains” during these important initial stages. The Office continues to be supported through fundraising, not through regularly committed IFLA funding. This places immense pressure on the office to raise money and diverts attention to the substantive intellectual freedom issues. It is hoped that with the new IFLA financial structure, the FAIFE office will be solvent, accepted as a permanent and key component of IFLA, and then the committee can continue its work in a less tentative environment. I strongly believe that the effort to maintain an international intellectual freedom committee is essential, especially for academic libraries, where the information flow has become internationalized among students, faculty, and librarians.

Let me share with you some of the opinions and information I have gleaned from some of my colleagues on the committee, from the 2003 World Report, and from my experiences at several FAIFE meetings in various parts of the world.

1. Some librarians at international meetings represent their countries in a very direct way. They are directed by library organizations or governments and must report back on their activities at IFLA. At the FAIFE meeting in Amsterdam several years ago, one colleague expressed his discomfort in discussing a particular censorship issue that was sensitive in his country. It brought back for me the era of the FBI Library Awareness Project when, in the 1980s, U.S. academic libraries were visited by FBI agents to determine what types of information was being sought by “foreign nationals.” Many of us who tried to negotiate with the FBI on this issue now have files with the FBI, which some of us verified through the Freedom of Information Act. Many of our colleagues worldwide share this problem, some much more directly and intensely.

Some colleagues have the job of reporting back to a relatively new library association or one in which col-

leagues want to know more about what FAIFE “does.” For these colleagues, the committee needs to continue its educational mission and work on outreach, with needs differing from country to country.

2. There is substantial cultural diversity regarding the definition of censorship, the prioritization of FAIFE activities, and the role of librarians in providing access to information. Some of this diversity is based on varying national legal and historical traditions. The First Amendment of the U.S. Constitution emerged from a tradition of individual rights, not from principles of social justice or group rights. Thus, the reason librarians defend the retention of a book like *Huckleberry Finn* is based on the right of an individual person to read that book, regardless of pressure from any group to ban the book because of its racist epithets. The same principle applies when a research institution like the University of Illinois collects Nazi-era literature. This collection was extremely difficult for me to explain to library interns in the Mortenson Center for International Librarianship, visiting UIUC from all corners of the world, when I showed them such collections. This is why in ALA, the groups representing social responsibility and those representing intellectual freedom sometimes disagree, even when they share so much common ground.

3. When I asked colleagues why they served on the FAIFE, they replied in various ways. Some are there to learn about what “intellectual freedom” actually means, as they move from an authoritarian regime or from war-damaged libraries. Perhaps their government has just adopted a guarantee of freedom of expression and librarians need to know how to implement the new laws. FAIFE should therefore continue to emphasize its educational mission, not forgetting to emphasize the “basics.”

4. Earlier I referred to differing cultural definitions of “offensive” content. Some of the differences are legally defined and some are based on cultural sensitivities. Among the issues mentioned by my committee colleagues were child pornography, blasphemy, “hate speech” web sites, the crisis of skyrocketing journal prices as a barrier to access; the revision of history books as “official history” changes with a new regime; ability to read a variety of political points of view, and the problem of “politically incorrect” content being ignored in collection development.

5. While privacy is a huge issue in the U.S., many countries are far more concerned and vigilant. In

countries where national ID's have been issued or where citizens have lived under very authoritarian governments, there is a great desire to protect what is often a newly gained and therefore precious right to privacy.

6. Economic issues regarding Internet access loom large, as I have documented above. ALA does have a *Library Bill of Rights Interpretation*, "Economic Barriers to Information Access," and the concern over the inequities of access to the Internet continues to grow. From a global perspective, I believe that FAIFE must focus on that basic economic issue. Without Internet access in the twenty-first century, all libraries and library users suffer, because we are so globally interdependent.

### Notes

1. [www.ala.org/ala/acrl/aboutacrl/whatisacrl/acrlstratplan/stratplan.htm](http://www.ala.org/ala/acrl/aboutacrl/whatisacrl/acrlstratplan/stratplan.htm)
2. <http://www.ala.org/ala/acrl/acrlpubs/whitepapers/intellectual/htm>
3. <http://www.ala.org/ala/oif/statementspols/statementsif/librarybillrights.htm>
4. <http://www.ala.org/ala/oif/statementspols/statementsif/interpretations/Default675.htm>
5. <http://www.ala.org/ala/oif/basics/internationalintellectual.htm>
6. I obtained the summary of the Yahoo! case through the January 12, 2005 *Memorandum* written by Jenner and Block, ALA's First Amendment legal advisers. This was distributed at the Freedom to Read Foundation meeting in Boston in January, 2005.
7. Slip Opinion at 18.
8. Madeleine Shachter, *Law of Internet Speech*, 2d. ed. (Durham, N.C.: Carolina Academic Press, 2002). See also "Law and Borders: The Rise of Law in Cyberspace," by David R. Johnson and David G. Post, in *Crypto Anarchy, Cyberstates, and Pirate Utopias*, ed. Peter Ludlow (Cambridge, Mass.: MIT Press, 2001, 145–95. Other articles in this collection are relevant.
9. On the IFLA web site, but also in *Libraries & Intellectual Freedom: World Report 2001 (Copenhagen: IFLA/FAIFE Office, 2001, 221)*.
10. *Libraries, Conflicts, and the Internet: An IFLA/FAIFE Summary Report* (Copenhagen: IFLA/FAIFE Office, 2002).
11. Stuart Hamilton and Susanne Seidelin, *Intellectual Freedom in the Information Society, Libraries, and the Internet* (Copenhagen: IFLA FAIFE Office, 2003).
12. <http://www.ifla.org/III/misc/im-e.htm>