

Freedom of Expression – Draft Discussion Document

1. Purpose

This is a discussion document produced by the Standing Committee on Freedom of Information of the Library and Information Association of New Zealand Aotearoa (LIANZA). As will be discussed below, despite the appearance of a New Zealand position on Freedom of Expression in statements from LIANZA, there remain some areas where discussion with the professional library community could provide clarity and assurance.

2. Introduction

The International Federation of Library Associations (IFLA) encourages its members to defend the importance of Freedom of Expression¹. In 2002 IFLA defined Freedom of Expression as “the right of every individual both to hold and express opinions and to seek, impart and receive information, through any media, regardless of frontiers.”²

The expression of thoughts and beliefs can be written (either published or unpublished), visual or verbal. In general library principles call for all forms of expression to be unhindered (unless unlawful). However, a literature review shows a history and facility in libraries for dealing with Freedom of Expression regarding the written published word, but that there is less clarity around the role of libraries in ensuring Freedom of Expression via the Internet and in talks and exhibitions in libraries.

Especially, there is an emerging range of opinions regarding free speech in libraries. Two opposing views in this debate are summarised by excerpts from blog posts by two U.S. librarians:

R. David Lankes, director of the University of South Carolina’s School of Library and Information Science:

“Shouldn’t libraries be place for all voices in the community? No. Libraries are not neutral microphones placed in a town square open to all comers. They are platforms of learning that acknowledge the full range of the views in a community, but with the community

¹ https://www.ifla.org/files/assets/hq/topics/info-society/documents/ifla_statement_on_fake_news.pdf

² <https://www.ifla.org/publications/joint-statement-on-freedom-of-expression>

develop and support a learning narrative that pushes against racism and bigotry.”³

David Lee King, Digital Services Director at Topeka & Shawnee County Public Library:

“I support the idea of libraries serving the whole community, and providing a neutral and trusted community space where ideas can be heard, discussed, and debated. Free speech is free speech, even if we don’t agree with that speech. That concept is pretty foundational to libraries.”⁴

The idea of unhindered free speech arises from the idea that truth emerges from open and free discussion. This idea was stated clearly by John Stuart Mill in his *On Liberty* (1859), where he argued that the airing and discussion of all points of view is required to arrive at the truth of any matter. Even if one person holds a view in opposition of all others, that view should still be heard. Mill believed in the power of group rationality, and the importance of dissenting views to make us think clearly about our positions.

However, the concept of ‘open and free discussion’ is problematic; for that to occur all parties to a debate have to have equal standing, and as lawyer Moana Jackson has said in regards to a public “racist rant” by a Pākehā man: “Freedom of speech, in effect, then became a shield for racist invective defined by those who were privileged by it, rather than those who were its objects and victims”.⁵

Another commonly stated library principle that comes into play in this debate is that of inclusiveness: “All New Zealanders have the right to borrow and access library services, without discrimination”⁶. The Democracy section of the American Library Association (ALA) *Core Values of Librarianship* incorporates both free speech and the concept of ‘access for all’ that might be endangered by it, “A democracy presupposes an informed citizenry. The First Amendment mandates the right of all persons to free expression, and the corollary right to receive the constitutionally protected expression of others. The publicly supported library provides free and equal access to information for all

³ Lankes, David (August 2017) On Racism, Ignorance, and Librarianship *R. David Lankes Blog*

link:<https://davidlankes.org/on-racism-ignorance-and-librarianship/>

⁴ King, David Lee (August 2017) Ugly Beliefs, Free Speech, and Libraries *David Lee King Blog* link:
<http://www.davidleeking.com/ugly-beliefs-free-speech-and-libraries/>

⁵ Jackson, Moana (2018) No one’s exercise of free speech should make another feel less free *E-Tangata* link:
<https://e-tangata.co.nz/comment-and-analysis/moana-jackson-no-ones-exercise-of-free-speech-should-make-another-feel-less-free/>

⁶ *Statement on Free Public Library Service* LIANZA 1986

people of the community the library serves.”⁷ It is interesting to consider what the aspects of a library are that might make it feel a safe place for all members of its community to visit, as Moana Jackson has said: “... no one’s exercise of free speech should make another feel less free.”⁸

3. Library Documentation relevant to Freedom of Expression

A review of international library codes found that many mentioned Freedom of Expression in relation to the written word e.g.:

“No information resources should be excluded from libraries because of the opinions they express; nor because of who the author is; nor on the grounds of the political, social, moral or other views of their author.”
LIANZA Statement on Intellectual Freedom (2002)

“Libraries have a responsibility both to guarantee and to facilitate access to expressions of knowledge and intellectual activity. To this end, libraries shall acquire, preserve and make available the widest variety of materials, reflecting the plurality and diversity of society.”
IFLA/FAIFE statement on Libraries and Intellectual Freedom (2007)

There is a *Joint IFLA/IPA (International Publishers Association) Statement on Freedom of Expression on the Internet (2003)* which quotes Article 19 of the *Universal Declaration of Human Rights* and continues by extending the principles covering the print environment to the electronic environment and asserting “that intellectual freedom is the right of every individual both to hold and express opinions and to seek and receive information and is at the heart of both publishing and library and information service” and continuing by observing that “The Internet has become a vital medium for freedom of expression and freedom of access to information” and calling for unhindered access to information via the Internet.

ALIA has included the concept of protection of the ‘hearer/reader’ in their *Professional Conduct Policy Statement*:

“Encouraging and advocating for intellectual freedom and the free flow of information and ideas.”

“Promoting an enabling inclusivity where all individuals are treated fairly and with courtesy, dignity and respect, free from bullying, harassment and discrimination.”

ALIA Professional Conduct Policy Statement (2018)

Some library statements include statements on Freedom of Expression and Free Speech:

⁷ <http://www.ala.org/advocacy/intfreedom/corevalues>

⁸ Moana Jackson Op. cit.

“Freedom of expression is an inalienable human right and the foundation for self-government.”

ALA interpretation of its *Library Bill of Rights*.

IFLA in a *Library Policy and Advocacy Blog* post has:

“It is true that the right to free speech is a crucial one, but it is not absolute. The Universal Declaration of Human Rights notes that all rights can potentially be limited when this is necessary to fulfil the rights of others. As regards the right to equality, there is explicit mention of the importance of combatting incitement to discrimination.”⁹

4. International and National documents relevant to Freedom of Expression

Many of the Library codes are based on International Documents or National Constitutions:

Article 19 of the Universal Declaration of Human Rights (1948) reads:

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 and regardless of frontiers.

The UNESCO Public Library Manifesto (1949) describes a public library as a vital community force:

“The public library should be active and positive in its policy and a dynamic part of community life. It should not tell people what to think, but it should help them decide what to think about. The spotlight should be thrown on significant issues by exhibitions, booklists, discussions, lectures, courses, films and individual reading guidance.”

The First Amendment to the United States Bill of Rights reads:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

In reference to this amendment the ALA Office for Intellectual Freedom advice to U.S. public libraries reads:

“Publicly funded libraries are bound by the First Amendment and the associated law governing access to a designated public forum. A publicly funded library is not obligated to provide meeting room space to the

⁹ Libraries and the politics of information in 2019 *IFLA Library Policy and Advocacy Blog* (2 January 2019)
Link: <https://blogs.ifla.org/lpa/2019/01/02/living-in-interesting-times-three-key-debates-in-information-politics/>

public, but, if it chooses to do so, under law cannot discriminate or deny access based upon the viewpoint of speakers or the content of their speech. Our goal is not only to protect free speech, but also to keep libraries out of court.”¹⁰

New Zealand is a signatory to the *Universal Declaration of Human Rights* and to the *International Covenant on Civil and Political Rights*, Article 20 (2) of which says: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” However, New Zealand does not have a list of inviolable rights written into a constitution; our charter of human rights is set out in the *New Zealand Bill of Rights Act 1990*, a statute that can be repealed by parliamentary majority. The *New Zealand Bill of Rights Act 1990* includes:

14. Freedom of expression

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

This right is not unlimited; all individuals may have the right to believe whatever they wish, but as soon as those views are expressed, those who read, hear, or see those opinions enter the picture. Section 5 of the Act states that the right may be “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. Moreover, although often talked about in discussion of Freedom of Expression, ‘hate speech’ is not defined in New Zealand legislation.

The *New Zealand Human Rights Act 1993* deals with discrimination. Section 61 of the Act deals with racial disharmony, making it unlawful to publish or distribute written matter which is 'threatening, abusive, or insulting', or to use such words in a public place within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access. These words must be “likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the ground of the colour, race, or ethnic or national origins of that group”.

Section 131 of the Act makes it a criminal offense to intentionally “excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national

¹⁰ OIF Responds to Library Bill of Rights Meeting Room Amendment. *American libraries*. July 10 2018. Link: <https://americanlibrariesmagazine.org/blogs/the-scoop/oif-responds-to-library-bill-of-rights-meeting-room-amendment/>

origins of that group of persons”. This can be through the distribution of written material, broadcasting words, or speaking in public.

Other pieces of New Zealand legislation to relevant Freedom of Expression are the *Films Videos and Publications Classification Act 1993* and the *Defamation Act 1992*.

5. Discussion

LIANZA statements on Freedom of Expression are consistent with the statements of other library organisations. They are also consistent in mainly dealing with written material in library collections: “No information resources should be excluded from libraries because of the opinions they express; nor because of who the author is; nor on the grounds of the political, social, moral or other views of their author.”¹¹

No library collection is all-encompassing, there is selection and deselection all clear the time, but by and large library collections (especially in public libraries) endeavour to include a wide range of views.

Regarding published writing, LIANZA and concerned libraries have a stakeholder role in the decisions of The Office of Film and Literature Classification, and of the Film and Literature Board of Review regarding Freedom of Expression. An example of this is the actions of Auckland Public Library and LIANZA during the saga of the classification of Ted Dawes’ young adult novel *Into the river* 2013-2015¹².

Once libraries started providing Internet access to information for their users, the complexity of decisions regarding control and ‘gatekeeping’ of library collections changed dramatically, for example:

- issues around Net Neutrality have been fraught
- the ease of expression offered by online blogs and social media appeared

¹¹ *LIANZA Statement on Intellectual Freedom* (2002)

¹² *Into the river* was classified M (unrestricted with a descriptive note re content) in July 2013, after having been referred to the Classification Office as a result of complaints from members of the public. The organisation Family First applied to the Board of Review seeking a review and restricted classification, and The Board gave it an R14 classification in December 2013. Dissatisfaction with the rating resulted in Auckland Libraries asking for the Board’s decision to be reconsidered by the Classification Office. The Chief Censor allowed the reconsideration and in August 2015 *Into the river* was classified as Unrestricted. LIANZA wrote to the Board the next month asking that their “interim restriction of “Into the River” be lifted, and that the R14 classification be permanently removed”.

- the opportunities for advocacy of Freedom of Expression within national frameworks increased, as did the potential for libraries to play a part in such advocacy.

LIANZA and concerned libraries have a role in supporting calls for unhindered access to information via the Internet. There are many initiatives trying to secure Net Neutrality, where Internet Service Providers (ISPs) are called on to treat all data equally. And there are initiatives such as the *Manila Principles on Intermediary Liability*, which call for ISPs, social networks and search engines “to be immune from liability for third-party content in circumstances where they have not been involved in modifying that content”, and where content should not be restricted unless unlawful.

Libraries also have a role in supporting calls for measures to minimise Internet filtering that creates personal ‘echo chambers’ and advising their users of the effects of such filtering.

Given the ease of expression via the Internet, there is an impact on libraries’ role of encouraging the creation and sharing of information in their communities. Many public libraries in New Zealand host creative writing groups that publish online, encourage online reviewing, hold classes on online etiquette, and provide advice in navigating the various online options for expression.

Librarians and library services are also affected when governments impose the wholesale obstruction of Freedom of Expression through Internet shut downs. In January 2019 alone five countries experienced some form of Internet shut down: Sudan, Bangladesh, the Democratic Republic of the Congo (DRC), Gabon and Zimbabwe. Zimbabwe cut access to social media when mass protests occurred in Harare and the DRC had a complete shutdown of access to the Internet for 21 days in 2018/2019 starting during the presidential elections.

The Internet can also be used for targeted censorship e.g. China temporarily banning social-media references to George Orwell’s *Animal farm* and *1984* during the announcement of the abolition of its presidential term limits; during this time, it was still possible to buy these books in bookstores or online, or presumably to borrow them from libraries.

Jenny Bossaller, Assistant Professor of Library and Information Science, University of Missouri, and John Bud, Professor in the School of Information Science and Learning Technologies, University of Missouri, distinguish between the ‘intellectual freedom’ on the library shelves and the ‘free speech’

which happens in the library space, acknowledging that the distinction blurs with the inclusion of public internet terminals.

“The First Amendment was created as a protection of democracy, as insurance against totalitarianism. Public spaces have been legally designated to provide civil spaces for the exercise of First Amendment rights. However, on the rhetorical front, hate speech is intended to intimidate. With intimidation as the intention of discourse, we should be concerned about its effects on political freedom and civic space.”¹³

We should ask whether libraries, particularly public libraries, should necessarily provide a platform when asked by individuals wanting to publicly express or display their views, where it is judged those views might be offensive or insulting to members of their community.

A recent (December 2018) high-profile example of this debate has been the outcry over Vancouver Public Library’s decision to allow Meghan Murphy (editor of *Feminist Current* and described by many as a TERF (Trans Exclusionary Radical Feminist)) to speak at the library. The decision went along with a statement by the Chief Librarian (see Appendix 1) which stated the library did not agree with the speaker’s view but had rented her speaking space due to the library’s commitment to free speech and intellectual freedom, her argument being along the lines of Evelyn Beatrice Hall’s “I disapprove of what you say, but I will defend to the death your right to say it.”¹⁴

It is hard to find assistance in decisions around where, if anywhere, libraries should curb Freedom of Expression (apart from when such expression is illegal). It is possible that some guidance can be found in Michael Gorman’s *Our enduring values* (2000). Gorman included Intellectual Freedom in his list of values:

- Defending the intellectual freedom of all member of our communities
- Defending the free expression of minority opinion
- Making the library’s facilities and programs accessible to all

In his revised *Our enduring values revisited* (2015) Gorman added:

- Seeking through all policies and practices to work for the good of all library users and the communities and societies in which they live.

Whilst libraries should always support freedom of thought and belief and strive to represent the widest possible range of views in their collections, should

¹³ Bossaller, Jenny and Bud, John (January 2015). What we talk about when we talk about free speech. *The Library quarterly* Vol 85, no. 1.

¹⁴ In her *The Friends of Voltaire*, 1906.

librarians also be considering the greater good of their communities when approached by speakers/artists who want to express themselves in the library space in ways that that might offend or insult community minorities?

There is a consistency in all Freedom of Expression statements on a line being drawn when the views expressed could lead to harm, even for John Stuart Mill

“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”¹⁵

And the IFLA blog post mentioned above:

“It is true that the right to free speech is a crucial one, but it is not absolute. The Universal Declaration of Human Rights notes that all rights can potentially be limited when this is necessary to fulfil the rights of others. As regards the right to equality, there is explicit mention of the importance of combatting incitement to discrimination.”¹⁶

The risk of harm is easier to judge when the harm being discussed is physical harm: incitement to riot for example. It is difficult to predict harm that may arise when views may give *offense*.

The difficulty of regulating offense was highlighted by a recent case in New Zealand, where Labour MP Louisa Wall brought a complaint under the Human Rights Act against Fairfax Media (July 2014) over the publication of two cartoons she felt offensive to Māori and Pasifika people. When she lost, she took the case to the High Court (October 2017), where, although the court did find that the cartoons were offensive, it determined their publishing was not unlawful under the Act.

At the heart of the debate are the questions of whether, and how, words or images can harm. Moana Jackson:

“Unlike the Western idea that ‘sticks and stones may break my bones but words will never hurt me’, our people have always understood the contrary — that the thrust of a weapon may be pushed aside, but the hurt of words cannot. In fact, word can be damaging simply because they can endanger others.”¹⁷

¹⁵ John Stuart Mill. *On Liberty*, 1859.

¹⁶ Libraries and the politics of information in 2019 *IFLA Library Policy and Advocacy Blog* (2 January 2019)
Link: <https://blogs.ifla.org/lpa/2019/01/02/living-in-interesting-times-three-key-debates-in-information-politics/>

¹⁷ Moana Jackson: Op. cit. The last sentence of this quote refers to a high profile rugby player condemning gay people to hell, saying his comments may “put at risk young gay people who may be struggling with their identity”.

One of the principles often cited in support of unmitigated Freedom of Expression in libraries is librarian neutrality. *The IFLA Code of Ethics for Librarians and Other Information Workers* (2012) calls for librarians and other information workers to be “strictly committed to neutrality and an unbiased stance regarding collection, access and service”.

However, Laurel Tarulli, School of Information Management, Dalhousie University, (among others) has recently argued that libraries and librarians have never been un-biased in their provision of services - that “any provision of information, any display of books, any choice of architectural design, is weighted with the world views of the decision-makers or information providers”.¹⁸ Tarulli doesn’t see this as a bad thing, it just means librarians have to be more aware and considerate in their decision-making of how their decisions may affect their communities.

Two statements on Librarian neutrality:

Joseph Janes, Associate Professor, Information School, University of Washington, Seattle

“Neutrality is essential to our role in public life. It is enshrined in our values, our laws, and our policies. We abandon it at our peril.”¹⁹

Julie Jones, MLIS student, Information School, University of Washington, Seattle.

“Libraries and higher education institutions must acknowledge that freedom of expression is not coming from a neutral playing field; some expressions actively and effectively silence others.”²⁰

A question when considering these arguments is ‘whose neutrality’ is being respected when librarians stand back and let anyone speak in the library space. In communities where power is not evenly distributed, the privileges of history can give some parties advantages that ‘neutrality’ protects. Librarian neutrality may be intended to foster free speech, but as Moana Jackson has said:

“Still others claimed that even offensive comments are part of the ‘marketplace of ideas’ that make a society free. Some of the noblest moments in human history have been struggles for freedom, but in the far from noble history of colonisation, the notion of freedom, and certainly

¹⁸ Tarulli, Laurel (2018) Bias in readers’ advisory services. *ALA’s Reference & User Services Quarterly*, Spring 2018.

¹⁹ Janes, Joseph (2017) Using our words getting it right on neutrality and libraries. *American Libraries*. Vol. 48, Issue 9/10.

²⁰ Jones, Julie (2018) Institutional Neutrality Isn’t Reality. *American Libraries* Vol. 49, Issue 5.

free speech, has always been a term subjected to troubling interpretations.”²¹

6. Draft Conclusions

Based on the discussion above, the Freedom of Information Committee of LIANZA has prepared the following draft guidelines for New Zealand libraries.

- Libraries have a responsibility both to guarantee and to facilitate access to expressions of knowledge and intellectual activity. To this end, libraries should acquire, preserve and make available the widest variety of materials, reflecting the plurality and diversity of society.²²
- No information resources should be excluded from libraries because of the opinions they express; nor because of who the author is; nor on the grounds of the political, social, moral or other views of their author.²³
- Libraries must adhere to the law regarding restricted materials, but they also have a responsibility to engage with appropriate processes to challenge such restrictions, when they believe Freedom of Expression is being unduly constrained.
- Libraries have a responsibility to engage in appropriate processes to ensure Freedom of Expression is not unduly restricted on the Internet, and to support the creation of laws and codes to minimise malicious use of the Internet.
- Access to, and expression on, the Internet and all of its resources should be consistent with the United Nations Universal Declaration of Human Rights and especially Article 19: ‘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 and regardless of frontiers’.²⁴

²¹ Moana Jackson. Op. cit.

²² IFLA/FAIFE statement on Libraries and Intellectual Freedom (2007)

²³ LIANZA Statement on Intellectual Freedom (2002)

²⁴ Joint IFLA/IPA statement on Freedom on the Internet (2003)

- These principles of Freedom of Expression should be upheld by libraries regarding exhibitions and talks in library spaces.
- However, unlike material held in collections, exhibitions and talks in libraries can expose library visitors to unmediated messages via publicity and promotion or via the exhibitions or talks themselves. This may appear to privilege such messages, which may cause harm if the views expressed are targeting specific groups²⁵ Even just hosting a talk carries this risk. In such cases, it may be appropriate for Libraries to:
 - require a speaker or artist to provide the scope of the talk or exhibition prior, and/or agree, in the case of a talk, to a moderator being present, and/or
 - agree to their representing their views on the library premises, but countering points raised in the talk or exhibition with alternative views and/or contextual information,
 - decide not to give a speaker or artist a platform.
- Libraries should strive to support the Freedom of Expression of the more marginalised groups in their communities, encouraging their voice and in particular, ensure they have a right to respond wherever appropriate.

²⁵ For example gender, ethnicity, religious belief, colour, race, sexual orientation or disability.

Appendix 1,

Vancouver Public Library (VPL) is aware of concerns that have been expressed regarding an event with speaker Meghan Murphy scheduled for January 10th at the Vancouver Public Library.

VPL is not endorsing, or hosting this event; it is a rental of our public space. VPL has zero tolerance for discrimination and does not agree with the views of the *Feminist Current*. However, commitment to free speech and intellectual freedom are fundamental values of public libraries and are bedrock values for democratic society. As such, we will not refuse to rent to an individual or organization simply because they are discussing controversial topics or views, even those we find offensive. We seek to be a welcoming place for all, and actively find ways to support the trans, gender variant and two-spirit communities.

VPL takes steps to ensure appropriate conduct occurs in its venues by clients who rent our spaces, including compliance with the BC Human Rights Code. VPL has explicit requirements in its rental agreements that govern the conduct of renters and has confirmed with *Feminist Current* their obligation to comply with all Canadian laws relating to the content of their presentation. We have advised the Vancouver Police Department of the event; they will be monitoring and will take appropriate action should conduct breach the Criminal Code. If we anticipate that this event will present a risk to public safety, additional security measures will be put in place.

We recognize that Meghan Murphy's opinions are concerning. However, VPL is not in a position to take action intended to censor speech that is otherwise permissible under Canadian law. We have no indication that the event on January 10th will include content that violates the Criminal Code.

VPL cares deeply about respecting the diversity of our community – intellectually, socially, and culturally – and seeks to ensure that our locations are welcoming and safe for all patrons, including trans, gender variant and two-spirit individuals. We welcome any community group to rent our spaces, and our staff actively work towards access and equity in VPL services, spaces and programs. The programs that we partner on and host are aligned with these values.

While it is difficult for us as individuals and staff to accept a rental from an organization whose perspectives we disagree with, the fundamental role of libraries as a place for free speech and intellectual freedom must be upheld.

Christina de Castell, Chief Librarian