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## Managing access: legal and policy issues of ICT use

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### **Introduction**

One of the challenges of managing library services in the digital era is the ever-changing nature of the legal and regulatory system. When dealing with the internet, there continues to be such a fundamental lack of understanding of its impact on wider society that it tends to be treated with equal doses of joyous wonder and rabid fear by many commentators. Each prominent incident of the negative aspects of the internet that reaches the public consciousness could lead to public authorities throughout the country panicking at the dangers they face in terms of liability as one of the main providers of access to the general public. Such challenges are regrettable, but unfortunately will continue to be part of the daily life of local authorities for the foreseeable future until society becomes comfortable with the nature of the internet and the inherent dangers that lie therein.

Yet managing ICTs is about more than merely the internet. Traditional concerns such as copyright, something librarians have been charged with protecting for decades, are even more of a concern in the digital age. The ability to digitize content and share it via e-mail across the world makes it a direct threat to the integrity of intellectual property rights. Considering libraries are in the rather unique position of acting as storehouses of intellectual property and offer the facilities to copy such materials, it makes them potentially liable if abuses are found to have taken place within libraries.

It is crucial then that public library staff are aware of all the issues involved

when providing ICT access to the public. From acceptable use policies, to internet filtering, assistive technologies, to protection of intellectual property, to data protection, the public librarian needs to have a thorough grounding in issues that may be relatively new to them. This chapter, then, has the following aims:

- to provide a theoretical background to the legal and regulatory issues involved in managing ICTs
- to provide definitions of the main legal issues and solutions to these challenges.

The supporting website for the book points to further resources where information can be found on the topics discussed.

### **Why access to ICTs needs to be managed**

Notwithstanding the logistical problems of managing access to PCs in public libraries, which pose many headaches for library staff with challenges such as booking systems and long queues, there are many reasons why access to ICT services needs to be managed appropriately. Resources are not infinite, as evidenced by the challenges presented to local authorities who are faced with the sustainability issues in replacing the infrastructure that was put in place from People's Network funding. In addition the risk of someone using a library computer to undertake a search for material that is illegal or inappropriate is quite high. There have been high profile cases where access to such material has caused a political scandal, an incident in Glasgow Libraries in 2001 being just one example where a reporter from a local newspaper turned up to a library asking why children could access pornographic sites on the internet (Nicoll, 2001).

Libraries have tried to address such controversy via two main methods. First, attempting to place the responsibility for the material accessed on the customer, via an acceptable use policy, and, second, by introducing filtering software to attempt to block the inappropriate sites. Both methods have their critics and could be deemed controversial.

### ***Acceptable use policies***

An acceptable use policy (AUP) is a document that a customer must sign and agree to before they are provided with access to the computer facilities. These agreements normally include a list of activities that are not permitted while using the computers, usually related to accessing pornography or chat rooms, and illegal

materials such as copying copyright protected materials. Such documents tend to be used by organizations to pass some element of liability onto the customer when accessing internet services. The theory is that by signing an AUP you accept that any breach of the policy is your own responsibility and not that of the organization. Breaching the conditions of an AUP can have the following results:

- In an employment context breach of such policies can be used to discipline a staff member or to terminate employment.
- In a university, college or public library breaching an AUP can lead to withdrawal of the privilege of using the facilities.

In all cases of breach of a code the laws of the land may well take precedence over any sanction imposed by the organization. Accessing illegal materials could result in being charged by the police, especially if the materials involve child pornography.

It is very important that you are confident in your knowledge of what your organization's AUP contains. It may be the case that you do not agree with such a policy, and it is also the case that you may feel that many customers glibly sign such policies without reading them. Try to ensure that you make customers fully aware of what the policy contains and what they are agreeing to. It is the case for instance that some organizations may prohibit such use as internet shopping; not all policies are the same and you should ensure your customers are aware of this. In addition the responsibility to children in this area is of paramount importance. Many organizations demand that children are prohibited from accessing internet services unless the AUP is signed by a parent or guardian. Some libraries insist that the parent must come to the library with the child to complete the form, while others do not. There is, again, no overall policy in this regard that all adhere to. Ultimately parental responsibility needs to be stressed, and some kind of marketing needs to be undertaken in this context. Many parents are particularly ignorant about what the internet contains, but do not wish their children to miss out. Public libraries are well placed in this area to provide information, or perhaps even taster sessions on what parents need to know.

The policy of using AUPs should be backed up with a robust internet skills approach to ensure customers know just what the internet does and what is out there for them and their children. The notion of reader development is a strong professional domain aimed at enhancing the confidence and knowledge of customers in their reading choices; what is essentially needed for internet users is some kind of web-user development programme which does likewise.

While it may seem to be the safe attitude to take that once you have a signed

AUP for each customer then any breach is ultimately their responsibility, the role of a public library should encompass the promotion of internet literacy in users. Vigilance continues to be important, as accessing of inappropriate material may well offend other users who are visiting the library while it is being downloaded. The AUP is not a panacea for all problems, but it must be used robustly with confidence and full knowledge of its contents by all staff.

For those readers interested in a fuller discussion of the ethical issues relating to AUPs, Paul Sturges' *Public Internet Access in Libraries and Information Services* discusses the themes, and gives excellent advice on how to develop and implement an AUP (Sturges, 2002).

### **Internet filtering**

Filtering of internet content is quite simply a form of censorship. It is an acceptable form of censorship for many organizations, but it is in the raw definition of the word, censorship. Indeed filtering is perhaps the most controversial of all management decisions that are made when it comes to providing internet access.

The basic dilemma faced by libraries that filter is the argument that it is one of the core responsibilities of the librarian to provide free and uncensored access to information. This is certainly true and neither the American Library Association (ALA) nor the Chartered Institute of Library and Information Professionals (CILIP) can be described as supporters of filtering. They do take a pragmatic approach, however, suggesting that in an ideal world we should never censor information we supply to customers, but acknowledge the unique dimension the internet offers for providing easy access to inappropriate material. This reflects the real world in that librarians may not wish to block access to information, but have to due to local authority policies at a central level.

The most common forms of filtering software use one or two approaches in blocking access:

- site blocking
- keyword blocking.

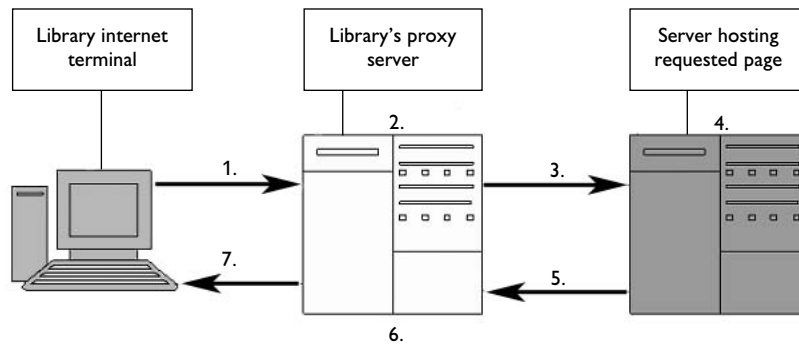
Some software programs use a combination of these approaches. Site blocking works on the basis that the software checks each internet transaction against a list of banned sites. If the software recognizes a site on the banned list it will not allow a computer to load up the pages from that site. This software needs constant updating, and it is normally the case that when buying the software the organiz-

ation subscribes to a database of banned sites with their purchase. It is also possible with this software to add your own sites to the banned list, therefore there is an element of control from the organization itself.

Keyword blocking simply looks for offensive words in either the web address or the contents of the requested pages. If the software recognizes any offensive words it refuses access to the pages containing the words. The organization itself can specify the level of filtering necessary for both types of software.

Figure 2.1 shows a simple illustration of what happens when a customer accesses the internet in a public library with filtering installed. This model assumes that filtering is installed on the proxy server and not individual library computers, therefore the model may not be a representation that reflects the process in all library authorities.

When the computer requests a page, the request is only granted after the computer has been authenticated by the library's proxy server. This server may block access to the requested web page at this point if the URL requested is a known (and banned) inappropriate site. If the site is not known then the request will be made to the server hosting the web page. When the page is returned it will then



1. Customer requests a web page via library computer.	2. Library computer is authenticated by library's proxy server. If filtering software is installed it may block known inappropriate URLs at this point.	3. Access is granted and request is made to the host server for stored page.
7. Page is delivered to library computer for viewing by customer.	6. Library's proxy server receives page and may analyse text of page for suitability using filtering software.	4. Host server searches its files for page.
		5. Host server sends page if available, returns error if not.

**Figure 2.1** A typical model for accessing a web page in a public library

undergo checking by the filtering software installed on the proxy server, although this time rather than the web address being assessed, it is the content of the page itself that is being checked for inappropriate words.

The main problems with internet filtering software are twofold:

- Installation of the software can lull an organization into a false sense of security.
- It can block access to legitimate content.

Many senior managers in organizations may not quite understand the limitations of filtering software. For instance, it is quite possible that, despite having filtering software in place, inappropriate sites could still load onto a protected computer. Filtering software is very much like virus checking software in that no matter how up to date it may be, it will not be up to date enough to provide 100% protection. Therefore the organization that assumes that it is protected against any inappropriate material being accessed is making a very dangerous assumption.

Blocking of legitimate content is more of a day to day concern for the public librarian. It is highly unlikely that all customers will ask staff for assistance when searching the internet, more so if the search they are conducting is of a personal nature. The following is a scenario that illustrates the potential dilemma:

A young person may be seeking information on sexually transmitted diseases. They may be too frightened to tell a parent, too embarrassed to visit a doctor without conducting some research on their own. They see the public library as an independent and safe place to look for such information. They run a search on the internet for information on sexual diseases, and the filtering software blocks the results.

It is highly unlikely in this scenario that the young person would ask a staff member to unblock such a site in order for them to access the material, despite the legitimacy of the content blocked. Other potential scenarios include the blocking of information on breast cancer, and information on sexual preferences. These are all obviously worst-case scenarios in terms of poor service to the customer, and with proper tweaking filtering software can get round them. It has to be said, however, that due to its role filtering software will always be designed to restrict rather than allow access. This core role, then, could be argued to be an anathema to the role of the public librarian. The ethical debate surrounding these matters threatens to roll on.

## The Disability Discrimination Act

The 1995 Disability Discrimination Act transformed the rights of disabled people in the UK. At the heart of the Act was the need for organizations to examine how they operated with regards disabled people in three specific areas: ‘For public libraries, the DDA has meant an examination of policies and procedures in a number of key areas including recruitment and selection, staff development and access to services, goods and facilities’ (McCaskill and Goulding, 2001, 192).

Part III of the Act is the part that applies specifically to access to goods and services. Organizations were allowed a staged approach to making their services accessible. The milestones were:

- December 1996 – Since this date it has been unlawful to treat a disabled person less favourably than an abled person.
- October 1999 – Since this date service providers have had to ensure that they make any reasonable adjustments necessary to make their services accessible to disabled customers.
- Since 2004 organizations have been compelled to consider making any permanent changes necessary to make their services and premises accessible.

While making buildings physically accessible is an area that the majority of staff may not be involved in, providing access to ICTs is one where everyone can contribute through expanding their knowledge in the area. Using ICTs can be immensely problematic for people with disabilities. Computer keyboards and mice require a high level of dexterity, therefore anyone with motor impairment will find using these to be a major hurdle. Individuals with visual impairments may find it impossible to read a monitor and to take part in web communications as a result. Fortunately solutions exist for all of these issues, but the first priority for library staff is awareness of the potential problems and the potential solutions. The *My Computer My Way* website (Abilitynet, 2004) is an excellent first port of call for anyone interested in how a computer can be customized for people with disabilities.

### **Assistive technologies**

Assistive technologies offer the opportunity to make previously inaccessible services accessible to disabled users. There are numerous types of assistive technologies related to several ICT uses, which are discussed below.

### Pointing devices

Many disabled users have problems navigating a desktop using a traditional mouse. The most common solution to this problem is a tracker ball (see Figure 2.2), which is a large ball housed in a mechanism that allows the full hand to navigate the cursor on screen. This also means that users who may have arthritis can use this instead of a mouse to operate the desktop of the computer.



**Figure 2.2** Tracker ball

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Similarly to the mouse, many disabled users have difficulty in using a traditional keyboard. Alternatives exist that provide a solution to this problem. The key element in most alternative keyboards is larger keys (see Figure 2.3), but some use coloured keys as well as an alternative to the QWERTY key set up. This is normally achieved by simply putting the keys in standard alphabetical order, making the keys easier to find for someone not familiar with QWERTY (Figure 2.4).

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**Figure 2.3** QWERTY large keys

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### Software solutions

Visually impaired users may have difficulty reading what is on the screen and typing text on to the screen. Solutions exist for this, the most famous for screen reading software being JAWS. This narrates the contents of the screen to the user, even highlighting where an image appears and where a hyperlink appears on a page. The use of such software makes good web page design (see Chapter 5) all



**Figure 2.4** ABC large keys coloured

Reproduced by permission of [www.assistivetechologies.com/](http://www.assistivetechologies.com/).

the more vital, as sloppily captioned links or images will mean the software does not recognize the image or link for what it is. Speech recognition software can be used to allow the user to dictate to the computer and allow the dictation to be translated into text on the computer screen.

### Costs

The challenge in the uptake of assistive technologies is in terms of the costs of the solutions. It is common to find only a handful of machines in a library equipped with the technologies necessary, both software and hardware driven. How provision of such technologies is accomplished is obviously a decision for local authorities to consider, but at the least it seems sensible that at least one tracking ball and large keyboard should be available in every public library in the UK.

### *Functions available in Windows XP*

Remember too that Windows XP has some simple assistive functions built into the operating system that allows screen magnification, narration of some commands, and an on-screen keyboard. These can be accessed via **Start**, **Accessories**, **Accessibility** from the main menu. These are, it must be stressed, no substitute for the real thing, but they may offer you a pragmatic and free of charge solution to some accessibility problems you may encounter.

### Copyright in the digital age

Copyright covers literary, musical, artistic, photographic, cinematographic works, maps and technical drawings and now also computer software and data-

bases. It is often denoted in works by the symbol ©. Copyright is the right conferred by law to enable creators of information works (literary, musical, artistic, software, broadcasts and so on) to benefit from their work. Such copyright material constitutes the main investment and assets of information providers and they will wish to protect their intellectual property, as without such protection there is no incentive to innovate and produce new information products and services. In order to attract copyright protection a work need only be original or not a copy – it does not need to be novel. Copyright protection usually extends for 50–70 years beyond the life of the author.

In this increasingly global information based society the issue of copyright protection is one of increasing importance especially in respect of electronic information products and services. The internet poses particular challenges and is seen by some as one big copying machine. All copyrightable works are able to be digitized as computer technology can handle not just text, but sound, pictures and video in digital form. Once on the internet copying of these is effortless, costless, widespread and immediate. In the past copying intellectual products has been time consuming and reproduction was poor. That is now changed. With digital copying all copies are as good as the original in terms of quality. Furthermore the internet does not respect national borders.

The rapid growth of the internet and the rise in multimedia information processing pose new challenges for copyright protection and exacerbate the tensions between creators of copyright material and users. On the one hand creators of software and information services like databases wish recompense for their effort but users may argue that prices are so high they resort to copying. The counter argument from producers is often that they need to recoup expensive research and development costs and prices are high because piracy is rife.

The creation of multimedia products is another problematic area. Obtaining copyright permission on a large number of pictures, sounds, video clips and so on may not only be expensive but very time consuming. Some see this as a barrier to the development of new products. Some companies have bought up copyright to libraries of film, pictures and sounds as they recognize these information resources can be licensed for use in the future in a whole host of ways. However tools for the digital manipulation of pictures, sound and video pose a challenge – how much does something need to be altered before it is no longer a copy?

Software is easily available on the web to enable surfers to share their files across the internet, perhaps the most famous being Napster and increasingly frequently, Kazaa. While the popularity of such services is beyond doubt, they offer major challenges for information professionals both in terms of legal access to

information, and in terms of managing the ICT infrastructure of their organization. It is highly likely that the computers in your library will be tightly controlled and limit such activities, but as customers begin to accept such services as standard, their concept of intellectual property protection can become less than robust. As Rupp and Smith have discussed:

It has become a norm to download music off the Internet and transfer it onto compact discs (CD) without compensating the artist who created the music or the firms that created, packaged, promoted, and distributed the music materials. Few if any people think twice that they are breaking the law by making a copy of material to which they do not own the copyrights. Piracy . . . is rampant and routinely practiced throughout the world. (Rupp and Smith, 2004, 103)

The new code of practice adopted by the Chartered Institute of Library and Information Professionals (CILIP) states that it is the ethical duty of a member to both: 'Defend the legitimate needs and interests of information users, while upholding the moral and legal rights of the creators and distributors of intellectual property' (CILIP, 2004).

And certainly it is difficult to argue that file sharing of copyrighted materials, despite the fashion towards this, should be supported by information professionals in this context.

There are more also more serious issues at stake in the copyright arena as content creators begin to assert their muscle. In March 2004 rights-holders began a high-profile campaign in Europe, following on from an earlier equally high-profile campaign in the USA, to bring to court individuals they claimed had offered thousands of copyrighted files free to be downloaded on the internet. The campaign targeted 247 people across continental Europe in countries where the record industry claimed that CD sales had fallen as a result of illegal sharing of music. Despite a recent study by two American researchers (Oberholzer and Strumpf, 2004) suggesting that music downloading was statistically insignificant in terms of its impact on CD sales, record companies are adamant that file sharing is impacting greatly on their income, and crucially are determined to do what they can about it via the legal system.

As an issue this will grow in importance, and there is always the danger that information organizations in the business of providing public access to the internet could become a target as customers who use public facilities to break copyright laws become a focus for rights-holders. In the context of internet service providers (ISPs) Conradi suggests that rigorous AUPs can shield the organization

for much of the responsibility and pass the liability to the user where it technically should belong. However, he acknowledges that there can never be a 100% guarantee that legal claims against the organization providing internet access would fail, should a rights holder decide to lodge such an action (Conradi, 2003, 289). Conradi also highlights the 2003 ruling against *easyinternetcafe* where it was ruled to be in breach of copyright law by allowing users to download music and burn the files onto CD on their premises. After a protracted legal dispute *easyinternetcafe* settled the case by paying the British Phonographic Industry £80,000 plus their legal fees of £130,000. This case potentially highlights the dangers in not being aware of what users are doing when burning material onto CD when using library computers. Unless you are 100% sure about your security, it can be difficult to know if a user is doing what eventually cost *easyinternetcafe* £210,000. The other issue to consider is that public libraries have many more potential service points that are potentially ripe for abuse than *easyinternetcafe*!

Copyright is essential for the protection of intellectual property and in this electronic age is becoming ever more important at both national and international level. Application of copyright has always imposed restrictions on the services libraries can offer their users. As increasingly electronic products and services comprise a larger part of collections and copyright law has been developed to include these products and services, the rights and obligations of libraries in respect of copyright have become more complicated. Public libraries are guardians of intellectual property and in that respect will wish to fulfil this role effectively in order to facilitate the continued production of information and knowledge. On the other hand they are access points to information and knowledge and wish to provide their users with high quality services and the appropriate information and knowledge they require. The public library therefore has to balance the rights of users to access information and knowledge with the rights of information and knowledge providers to be recompensed for their intellectual effort.

Yet controversies relating to copyright threaten to grow in the future. As the next generation of users arrive in libraries, equipped with the download and file-share mentality, it is quite possible that their knowledge of and respect for intellectual property rights may not be evident. The role of the public librarian in this context is a vital one, not merely in the dual role of gatekeeper and provider, but also in that of teacher. Fuller discussions on copyright in libraries are available in either Norman (2004) or Cornish's (2004) works, both by Facet Publishing.

## Licensing of electronic resources

Intellectual property also relates to CD-ROMs, and increasingly DVD-ROMs, many of which are available for use in public libraries. CD-ROMs can be anything from titles that support TV shows, such as *Changing Rooms* and *Bob the Builder*, to makeover software that allows you to profile yourself digitally with a new hair design, or reorganize your garden virtually.

One of the issues to guard against with such resources is the specific licence requirements. While copyright obviously guards against copying the material, an extra layer of legality is evident in many in terms of the stringency of their licence agreements. For instance, many CD-ROMs may allow a site licence for use, meaning that the material can be installed on all machines on site for no further charge. Others state that the software can only be installed on single machines; or others state that all machines can have the material installed, but only one user at a time can access.

Cambridge Information are a supplier of CD-ROMs to many libraries and offer advice on licensing issues. On their website they have a list of commonly asked questions, including:

- Can we upgrade standalone versions to network versions?
- Which titles are suitable for LANs and/or WANs?
- How do we calculate the number of concurrent/simultaneous users?
- Which titles can be cached?
- Which titles are NT network compatible?
- Which titles have paper licences (licence only which needs to be purchased in addition to the standalone software)?
- Which titles have full network versions (includes software and licence)?  
(Cambridge Information, 2005)

As can be seen, the purchase of CD-ROMs cannot be assumed to be as straightforward as that of traditional resources such as books. It is important when buying such materials that the librarian understands all limitations of use that the licence imposes. Suppliers should be able to offer advice on such issues, but if in doubt ask, and even more importantly ensure that all staff are knowledgeable about the licences of all CD-ROMs available for use in the library. For instance, it may be worth considering putting small advice notes either on each CD-ROM case, on the library management system, or indeed both. Erring on the side of caution would seem the sensible approach given the litigious nature of many content creators, besides which, as an information professional it is simply the right

thing to do. Tempting as it may be, it is important not to be swayed if only one copy of a popular CD-ROM is available in the library and more than one person wishes to use it. The fact is that installing the CD-ROM onto each machine might enable all to use it simultaneously, may not actually allow you to do so. Essentially it is the analogue equivalent of photocopying a book to allow multiple users to borrow it.

### **Data protection – data privacy and safety online**

Every day across the world people visit websites that record information about them. It is quite likely that the next time you are on duty in the library, members of the public could be visiting sites that require registration and demand they pass on personal details about themselves before access. It is also very likely that many of these people have little concept of their rights under law, and the uses to which this information may be being put. Thus it is important that public library staff are aware of the issues relating to data protection.

Data protection illustrates the inherent tensions which exist between the right of individuals to keep information about themselves private, and the requirements of companies and government to maintain information about individuals to facilitate commerce and the provision of services or to prevent crime.

### ***Privacy concerns and the internet***

Surveys of net users have often shown privacy on the internet to be a matter of great concern. Fears for the misuse of their personal information are an issue for net users and there is evident support for privacy laws to be enacted in the US. In particular the use of ‘cookie’ technology, which can potentially disclose personal information of unsuspecting web users is subject to criticism (Electronic Privacy Information Center, 1997).

While it is impossible, and undesirable, to be standing over customers’ shoulders when they access websites, it is a good idea to have some kind of instructions for them on what to do if websites request information on them before they access. It is certainly true that not all sites who request information on their visitors are up to no good, but it is important that customers understand exactly what does happen when you pass on your details online. Very few of them will read the lengthy information provided by websites to state what they will do with your data, and even sites as straightforward as official football club sites require visitors to register with the site before they are allowed to view material.

A good idea may be to have posters strategically placed around the computer area of the library highlighting some of the issues. Some key points you may want to get over to your customers might be:

- Their personal data is potentially valuable; do not pass it on carelessly.
- If a site requires detailed information on them before they can access it, why is this?
- If they feel the request is unreasonable, complain to the site provider.

## Conclusion

As can be seen in the discussion above, there are many legal and policy issues that impact on the use of ICTs in libraries and learning centres. Staff need to be made aware of these issues even before they assist their first customer, as ignorance in these areas is not only a recipe for poor service, it can also be potentially costly for a library where they are liable for any policy or legal breach.

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