

## DISPLAY OF INFORMATION THAT MAY BE HARMFUL TO MINORS

A. Patrons may not display in the library, materials which may be harmful to minors based on established definitions related to sexually- explicit images. For guidance in interpreting “sexually explicit”, definitions for three terms; “sexual conduct”, “sexual excitement”, and “sado-masochistic abuse”; are taken from the Utah State Code 76-10-1201:

1. “Sexual conduct” means acts of masturbation, sexual intercourse, or any touching of a person’s clothed or unclothed genitals, pubic area, buttocks, or if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.
2. “Sexual excitement” means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.
3. “Sado-masochistic abuse” means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

B. It is hoped that by focusing on these definitions, we will avoid being arbitrary and capricious, or overreaching our purpose of limiting the display of certain types of information in a public space.

C. If a patron displays information which may be harmful to minors, based on these definitions, he or she will be informed that library policies prohibit the display of such information and a request will be made that the patron exit the site and avoid entering similar sites.

It should be acknowledged from the onset that interventions of this nature are uncomfortable for both the patron and the staff member. It is not easy to intervene in any situation involving patron behavior. However, when it is necessary to intervene, the staff member should be careful and discrete and verbal discussion of the situation should be as limited as possible.

If the situation permits, it is best that two staff members observe the situation in case further documentation is required.

D. A staff member will approach the patron and indicate: “Sir/Madam, I have to ask you to exit the site you are in immediately and review this information.” The staff member will then provide the patron with a printed statement that reads:

“As the library is a public space frequented by minors as well as adults, display of information which may be harmful to minors is prohibited. A copy of the Library’s policy and additional information is available upon request. If you have question’s regarding this policy or its enforcement in this case, please contact the Library Director at 789-6623.”

Following the incident, the staff member will make a note describing the patron, the nature of the material seen, and any other information, such as additional conversation.

E. If the patron refuses to exit the site, re enters the site, or enters a similar site, the staff member will approach the patron and say: “Sir/Madam, I have informed you of the Library’s policies and asked you to comply. I will ask you once more, and for the last time to exit the site immediately.”

If the patron refuses to comply, or asks “What will you do if I don’t?” the staff member will indicate that the library has established procedures for these cases and will present a printed statement to the patron that reads:

“If a patron fails to comply with the request of a staff member to terminate prohibited uses of the Library’s PC’s, or to leave the PC’s following repeated violations, the staff is instructed to contact local law enforcement officials who will determine what course of action to follow. The matter will also be referred to the Library Director who will determine, in consultation with the Eagle Mountain City Attorney, whether to suspend the patron’s Internet privileges and whether to pursue additional legal actions.”

F. If the patron still refuses to comply; staff members should contact local law enforcement, indicate that a possible public nuisance situation is underway and request their immediate assistance. Upon the arrival of the police, staff should cooperate with them as fully as possible, leaving the management of the situation to them.

In these extreme cases, staff members should make note of the website being accessed and print the screen or screens involved in the dispute for future reference. Staff members should also contact the Library Director immediately.

G. It should be noted that this approach would also be taken if an individual were displaying hard copy materials, e.g., such as a magazine, in the library and staff had to intervene. It should be noted that the relevant public decency law which we would consider applying may be found in Utah Code 76-10-803, specifically subsection (b), which includes “offends public decency” in the definition of public nuisance.

- H. Patrons who have been required to exit a site for any reason may appeal the action of the staff to the Library Director who will determine whether or not the site meets the Library’s policies for acceptable use. If the Director determines that site falls within the scope of acceptable use, he or she will discuss with the staff involved the basis for the initial action and inform them of the reasons for the reversal. If the Director determines that the site falls outside the scope of acceptable use, the patron will be so informed in writing. Appeals to the Director may be made immediately and up to five (5) days after the action of the staff, and may be made verbally or in writing. The Director will respond within one (1) business day of receipt of the appeal. If the patron is not satisfied with the decision of the Director, an appeal may be made to the Library Board at its next regularly scheduled business meeting, at which time the Board will act. The appeal to the Library Board must be made in writing.
- I. Patrons may appeal any aspect of Library Policies to the Library Board.

## **J. Minors**

As indicated above, the Library views its relationship to minors in a somewhat different light than that it has with adults in terms of Internet use. Because of its nature, Internet opens to a minor user a world of information far beyond what most public libraries would tend to own in terms of both scope and content. Consequently, the public library, through the Internet connections it provides can offer minors, as well as all of the public, vastly more information than ever before, but can also serve as the link to information which communities and states have deemed as harmful for minors to be exposed to.

While the library cannot assume the responsibility of enforcing laws related to materials potentially harmful to minors, it can establish policies that attempt to limit the opportunities for minors to access or be exposed to materials beyond the reasonable boundaries of what may be considered appropriate for minors. In applying this concept, the Eagle Mountain Public Library relies not only on definitions contained in state laws, but also on the notion that its collection development policies establish broad boundaries of appropriateness which in turn create an expectation of what parents may anticipate their children will encounter at the library.

Consequently, content limitations for minors are somewhat more stringent than those for adults, and the basis established for staff to intervene is accordingly broader.

1. Staff members may intervene in the use of the Internet by a minor when the minor is accessing materials which are sexually explicit, in accordance with criteria stated under “Display of Information which May be harmful to Minors”, or which may be obscene based on criteria established by the United States Supreme Court and reflected in Utah Code Annotated 76-10-1203, which reads:

Any material or performance is pornographic if: a) the average person, applying contemporary community standards finds that, taken as a whole, it appeals to prurient interest in sex; b) it is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse or excretion; and c) taken as a whole it does not have serious literary, artistic, political or scientific value.

In terms of actual enforcement of policy, minors based on the “harmful to minors” definitions would not already prohibit few of if any cases that are addressed by the definition of obscenity for access. In the unusual case in which this does occur, staff members should make a good faith effort to apply the above criteria, preferably in consultation with a second staff member if the situation permits. In applying these criteria, it is again important to recall that the staff is not enforcing the law but is using criteria established by statute for guidance in managing public access to information in a public space.

All criteria established for adult use of the Internet apply to use by Minors.

2. Staff members may intervene in the use of the Internet by a minor when the minor is accessing materials which include nudity, as defined in Utah Code 76-10-1227, when such nudity is clearly not integral to a work or artistic, educational, or scientific intent. Staff members may intervene in the use of the Internet by a minor when the minor is accessing materials that include graphic representations of gross bodily functions or graphic representations or extraordinary violence.

Nudity is defined in Utah code 76-10-1227 as follows:

“Nude or partially denuded figures means: (a) less than completely and opaquely covered: (i) human genitals; (ii) pubic regions; (iii) buttock, and (iv) female breast below a point immediately above the top of the areola; and (v) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

These guidelines clearly involve some element of judgment, and staff should intervene only when they are clear regarding the particular case. If there is doubt in the staff members mind, a second staff member should be consulted. If doubt remains, the staff member should refrain from intervening and simply make note of the case for future reference and discussion. As with adults, staff should defer to the right of the patron to search and conduct inquiries and use intervention only when necessary to remedy a clear situation. Preference should be given to providing the individual minor with information and to helping clarify appropriate uses of the Internet.

3. If a minor accesses material which requires intervention, staff members will make a judgment about the appropriate means for intervention based on the age of the individual, the nature of the material being accessed and the opportunities the staff member senses for providing information that will deter future difficulties.

Minors may range in age from quite young to near adulthood, and methods for intervening when problems arise should vary based on several considerations. In all cases, the first intervention should be firm and educational, focusing on what is appropriate and what is not for “children”, when working with younger, and “minors” when working with older individuals. Staff members

should emphasize the availability of child-friendly search engines with younger children in particular.

If problems persist with an individual minor either the same day or over several different visits to the library, staff should document the nature of the problem and the specific incidents, including dates and conversations. In consultation with the Director, staff will map a strategy that involves a progressive level of response that may include conversations with and verbal warnings to the individual, a letter to the individual's parents and suspension of Internet privileges for a period of time. As with adults, minors may appeal the denial of access to a particular site in accordance with the method and timeframe established in subsection H, above.

## **K. Nudity**

Nudity presents special problems in terms of appropriate uses of the Internet and displays of materials. Nudity is an integral part of much of the great art of the world and may be presented in paintings, photographs or sculptures. Nudity may be encountered in an art gallery as well as in works of public art, and certainly in books owned by libraries and sold in local bookstores. At the same time, nudity may, under certain conditions, be considered indecent for public display, harmful to minors and even pornographic. However, determination of the legal status of nudity in a particular instance is very difficult and requires judgment based on statutory criteria. Given the difficulties surrounding the exercise of such judgment, the Library chooses to approach the area with caution and to not intervene except in response to a patron complaint. This means of response is similar to that which staff members would take in response to complaints about any other aspect of patron behavior, such as creating noise or being disruptive.

1. Staff members may intervene when adult patrons are accessing materials that contain nudity in response to a complaint received from another patron. Assuming that the complaint is based on simple nudity and does not involve other forms of sexual activity which may fall into the "harmful to minors" categories listed above, the staff member should inform the complaining patron that nudity in and of itself may not provide a basis for us to require a patron to exit a site. The staff member may also state that he or she will indicate to the patron conducting the search that a patron has complained about the content of what is being displayed, and will ask the patron to consider this information in deciding whether or not to continue the search. This may be the extent to which the staff can intervene in such a situation. The patron may not choose to exit the site, which may contain a photograph or a partially denuded celebrity, for example, or a painting that includes nudes; neither of which may be "indecent for public display". If the complaining patron is not satisfied with the explanation provided and the action taken, he or she may speak to the Library Director to express concern and for further information on the policy.

## **L. Illegal Activity**

1. Staff members may intervene in the use of the Internet when they have reason to believe that information being accessed is illegal.
2. If the staff perceives that a patron is accessing information that involves graphic representations of children involved in sexual situations, which is the most likely scenario to arise that could involve a violation of the law, the following steps will be taken:
  - A. If possible, the staff member will ask a second staff member to view the information in order to verify its nature.
  - B. The staff will immediately contact local law-enforcement authorities and inform them that a potential violation of laws has occurred related to accessing information that involves children in sexual situations.

- C. Staff will note the time of the situation, and will monitor the patron until law-enforcement authorities arrive.
- D. Staff will make notes regarding the situation, including the basis for their decision to contact law-enforcement authorities. A copy will be retained in the Library.

## Sexual Harassment

Staff members may intervene in the use of the Internet when another staff member indicates that a patron's use of the Internet is creating a hostile work environment.

In some cases, a patron's use of the Internet could create an environment that a staff member senses to be sexually hostile. Such a situation could arise from the patron accessing a single piece of information that the staff member considers to be inappropriate. However, it is more likely that the situation would involve a patron not only accessing the information, but also attempting to bring it to the attention of the staff member. For example, a patron could access sexually explicit information that a staff member might find inappropriate but not feel that it is creating a hostile work environment. If subsequently the patron calls the staff member over to ask questions about the computer with the same information being displayed, the staff member may feel differently. Staff members must be careful to distinguish in their personal feelings between the right of a patron to access information which they, the staff members, may find offensive or inappropriate, and the moment when that right to access crosses a line and contributes to a hostile work environment. It is the point at which that line is crossed, in which the behavior of the patron as much as the information is being accessed becomes a problem that the staff may intervene in the patron's use of the PC.

In such cases, the following steps should be taken:

- a. The staff member who senses the hostile environment should normally not be the staff member who intervenes in the situation. Instead, the staff member should report the circumstances to the Assistant Librarian or Library Director. The staff member should indicate the nature of the problem and make subsequent notes about the behavior of the patron and the information involved. A copy of these notes should be retained in the Library and a copy set-aside for the Director to review.
- b. The second staff member involved will approach the patron and indicate that concern has been expressed about his or her behavior. The staff member will indicate the specific nature of the concern and ask the patron to be aware of it in future interactions with the staff.
- c. The staff member will not require the patron to exit a particular site on the Internet or to leave the library. The intervention is intended to alter a behavior that has interfered with the use of the library by another individual; in this case, a staff member attempting to carry out his or her duties.
- d. This is the extent of the Library's intervention in the particular situation unless it becomes a larger behavior problem. The staff member involved may wish to be off the floor until the patron has left. In the case of a persistent problem with a single patron, the staff should consult with the Library Director.

## Suspension of Privileges

If a patron persists in using the Library's PCs for purposes that are not permitted under library policies, such as for chat rooms, games, etc., or continues to access sites which contain information which may be "harmful to minors" after being instructed on several occasions not to do so, he or she may have Internet privileges suspended temporarily.

Prior to any suspension of privileges, a patron will receive a letter from the Library Director alerting him or her to the nature of the problem, requesting compliance with library policies, indicating that further actions may be taken if compliance is not forthcoming, and providing an opportunity for the patron to offer his or her perspective. Following a further violation, the patron will be notified that his or her Internet privileges have been suspended for a period of time not to exceed three (3) months, and providing the patron with a right to appeal the decision to the Library Director, and ultimately, to the Library Board.

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