



THE SCOOP ON PATRON PRIVACY

Legislative loopholes have made it harder than ever for librarians to assure users that their records are snoop-proof
by Jennifer Burek Pierce

"Numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-tops.'" —Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," Harvard Law Review, December 15, 1890

These words on privacy, more than a century old, still evoke issues that libraries must address in today's increasingly technological information environment, which has been compounded by potential intrusions sanctioned by the USA Patriot Act. Much as attorney Samuel D. Warren and future Supreme Court Justice Louis D. Brandeis noted 114 years ago, society has yet to resolve "the exact line at which the dignity and convenience of the individual must yield to the demands of the public welfare." Conversations with two concerned practitioners and a library and information science professor yielded thought-provoking statements pointing to the potential for governmental prying as a significant threat to the freedom to read.

Lines in the sands of the times

"The war on terror may be the biggest threat to the privacy of the reading public and of library users," said Jim Kuhn, head of technical services at the Folger Shakespeare Library in Washington, D.C., and chair of the ALA Intellectual Freedom Committee's Privacy Subcommittee.



"The thing that is of most concern now is that threats to physical safety and national security are being used by

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government agencies to justify data mining and profiling. "People may be coming under suspicion because of their reading habits," Kuhn continued. "There are lots of signs in this direction. Pointing this stuff out is not indulging in paranoia."

Noting that ALA's role in responding to privacy concerns has changed with the times, Kuhn explained that the Association's Freedom to Read statement "in support of the values of democracy and a reading public" was developed in 1953 in reaction to the anticommunist sentiment during the Cold War. Last summer's amendment to the Association's 21-year-old Policy on Governmental Intimidation (www.ala.org/ala/oif/statementspols/otherpolicies/policygovernmental.htm) responded to concerns brought about by the Patriot Act. Of the June 2004 amendment, Kuhn observed, "Now, for the first time, the Freedom to Read statement makes mention of threats to safety and national security. It now refers explicitly to government surveillance."

"Libraries need to be trumpeting this fact to their patrons," he asserted, noting, "A lot of libraries felt they could no longer in good faith tell their patrons they could protect their information."

Despite the existence of ALA statements on privacy and related matters of patron rights, Kuhn notes that these issues are far from resolved. "We have a Code of Ethics [www.ala.org/alaorg/oif/ethics.html]. When the rubber hits the road, what does that mean?" he asked. Despite the fact that the Association's anti-intimidation policy "encourages resistance to abusive government power," Kuhn contended, "ALA is never going to tell a librarian not to comply with a law enforcement order. Librarians need to ask themselves [at what point] will they say 'This far and no further?'" He added, "It's not really black and white, and it's a moving target."

Kuhn draws his line in the sand at complying with

broad inquiries from law enforcement, noting that “under the new Intelligence Reform Act of 2004, the standards have been weakened even further.” The new law affects privacy rights in two ways: by mandating federal machine-readable standards for state-issued ID cards and by weakening the standards under which the government can obtain a court order under the auspices of the Foreign Intelligence Surveillance Act. However, Kuhn indicated he would cooperate with specific, focused, court-sanctioned requests for information.

“Some libraries have policies against data gathering. This generally comes from concerns for privacy rights,” he stated, cautioning, “There are circumstances where libraries need to gather identifiable information.” While transactions like issuing library cards require collection of such data, use of internet terminals does not, he said. The test he recommended for practitioners is to ask themselves: “Does the provision of the service require collection of the data?”

Kuhn noted that different institutions have legitimate reasons for different answers to this question. What results, then, is a need for stronger standards that correspond to the types of information sought and retained. “If you’re going to keep it, you’ve got to protect it. That’s getting harder and harder.” He mentioned scrubbing—removing personally identifiable traces of library use—as a necessary and desirable aspect of computer maintenance.

Shredding and signage

Anne M. Turner, director of the Santa Cruz (Calif.) City-County Library, has grown used to making news headlines because of her library’s stance on privacy. In her system, what Turner calls “absolute confidentiality” is the standard for interactions with patrons, regardless of age, the format of resources used, the nature of the reference question asked, or the amount of overdue fines owed.

Explaining that the Patriot Act has undercut a strong California law protecting patron privacy, Turner said that passage of the federal law prompted her and the library’s board to seek ways to bolster the confidentiality of library transactions and to inform community members about how federal legislation affected their rights. Because the Patriot Act pertains to terrorism-related inquiries, state and municipal provisions for confidentiality of records still have value. “Our board adopted a resolution affirming what I was doing to reinforce confidentiality,” Turner said.

“The board approved and instructed me to post signs at each circulation terminal that say we can no longer guarantee the privacy of transactions,” Turner said. “The effect of posting warning signs was that the public was stunned. In California, the outrage is substantial,” she said.

Turner said that while Santa Cruz libraries have not been queried by the FBI under the provisions of the Patriot Act, the system will continue to promote awareness of the law and its potential impact. “We’ve still got our warning signs up, and we’re still shredding [unnecessary records],” she said. “It’s the principle of the thing. Librarians should make a fuss about this.”

She encouraged librarians to consider ways to advocate for and enact protection of patron privacy within the bounds of the Patriot Act, which she described as “a very dangerous law.” She stressed the importance of talking with both library boards and Friends of the Library-type organizations to get their support in “finding any sort of visible thing you can do.”

In terms of managerial actions that safeguard confi-

identiality, Turner offered two basic principles: “Think carefully about the kinds of records you’re keeping and why,” and “Get rid of records if we don’t need them.” The importance of reviewing recordkeeping practices is critical, she added, noting that in Santa Cruz, efforts to protect patron privacy caused the

library to revisit decisions made in 1985 when automated systems were implemented.

Dodging the “double whammy”

Understanding privacy is not a simple matter, according to Philip Doty, associate professor in the School of Information at the University of Texas at Austin and privacy and information policy expert. “There are many definitions of privacy extant in a society like ours,” he said. Any discussion about privacy typically invokes multiple assumptions. Privacy, Doty explained, has been applied to observable behaviors, such as an individual’s physical location or a conversation in a public place, as well as to personal and intellectual activity—reading preferences and web usage.

Further, there is a tendency to assume that privacy describes an individual right, rather than a shared interest. In “Digital Privacy: Toward a New Politics and Discursive Practice” (Annual Review of Information Science and Technology, 2001), Doty described privacy as an element in social relationships, noting that it pertains not only to individual behavior but also to ideas about “the social world.” In other words, the ways an individual behaves with others and in social contexts may also warrant the expectation of limited disclosure of personal information.

The way these issues pertain to libraries is complex. “A public library is, on the one hand, a government agency, yet we don’t regard it as particularly governmental,” he said. “There’s a special obligation that govern-



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ment agencies have because of the power they have of eliciting information from us."

The post-9/11 environment and the technologies that provide and manage information have combined to complicate the challenges for those interested in preserving privacy. Contending that privacy rights have been on the wane ("Privacy has been undertheorized, underconceptualized, and under erosion for at least five years"), Doty nonetheless sees the September 11 terrorist attacks as "a signal event" in the chronology of the conflict between personal rights and government responsibilities. At the same time, he explained, the trend in recent years has been a strong emphasis on security that has the government conducting its activities "increasingly in the dark" and has furthered its "intrusion into the lives of citizens and groups." This pairing of secrecy with the collection of information deals Americans "a double whammy," and feeds belief in a non-existent "technological fix that will protect us from all threats."

In the midst of this governmental intrusion into once private matters, the library "is being asked to be a security apparatus of the state," Doty observed. When this happens, ordinary human rights—such as reading, seeking, and sharing information—are violated.

"Under the new conditions, libraries are being asked to cooperate with the state in surveilling citizens," he said. "We try to paint libraries as places where all ideas are welcome. It's a situation where citizens believe they're free from that surveillance, where they're encouraged to inquire."

Facing the threats to privacy involves awareness, education, and action, according to Doty. "No matter what one's politics, one of the obligations of intellectual and academic institutions is to be the loyal opposition," he said. "Institutions like ours are dedicated to free inquiry."

He saw reasons for both optimism and pessimism about the issue of privacy. On the plus side, "Citizens increasingly are aware of how their privacy may be compromised and how to protect themselves," Doty said. Librarians are demonstrating efforts to inform themselves about these same topics, he added, noting that the profession's commitment to the protection of records "has been pretty strong." Less encouraging are the government's efforts to create a sense of permanent emergency and the precedence of federal laws such as the Patriot Act over state laws protecting the confidentiality of library records.

In thinking about the future of privacy rights, Doty drew on something one of his professors used to say:



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—Anne M. Turner

"Predicting the future is easy. Being right is the hard part." The prediction Doty feels safe in making is that there won't be a time when government suddenly releases its interest in privacy; instead, he said, librarians need to continue educating themselves and working to influence policy.

Other possible pitfalls

Kuhn, Turner, and Doty each offered further perspectives on the future of privacy issues. "It's going to affect libraries in ways we can't even imagine yet," Kuhn said of RFID, or radio frequency identification tags, which some libraries have placed inside circulating items to speed circulation transactions.

One of Turner's key concerns is children's privacy. "Librarians need to think through the implications of their actions," she said, noting that because libraries

offer aid to those in difficult and even threatening situations there is a strong rationale for maintaining confidentiality. Information requests and borrowing records should be "between you and the kid," she insisted.

Doty identified copyright as an additional concern, predicting that "libraries,

internet service providers, and others will be under increasing pressure to act as agents to 'protect' strong copyright by monitoring people's use of copyrighted material. So here we see librarianship's concerns about the public interest in information and about the protection of people's privacy undermined at the same time."

The varied and complex aspects of privacy mean that librarians still have much to consider as they engage in what Warren and Brandeis in 1890 called the "difficult task" of achieving the ever-shifting goal of protecting patron privacy. The views of Kuhn, Turner, and Doty reflect a dialogue within the profession, rather than definitive answers, for librarians and library users. ❖

For Further Information:

- ALA Privacy Toolkit: www.ala.org/ala/oif/iftoolkits/toolkitsprivacy/.
- Guidelines Regarding Thefts in Libraries: www.ala.org/ala/acrl/acrlstandards/guidelinesregardingthefts.htm. Addresses the issue of retaining patron records for internal security purposes while maintaining confidentiality.
- Protecting Patron Privacy on Public PCs: webjunction.org/do/DisplayContent?id=7531.
- RFID Implementation in Libraries: www.privacyrights.org/ar/RFID-ALA.htm.
- "Scrubbing" Your Patrons: olis.sysadm.suny.edu/sunyergy/22scrub.htm.

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