

# WEBER COUNTY LIBRARY SYSTEM

## *Administrative Procedure*

### ACCESS, DISPLAY, OR PRINTING OF INAPPROPRIATE MATERIAL

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#### Background:

The Freedom of Speech rights contained in the United States Constitution offer broad protection, allowing citizens to read or view many types of material. Despite these Freedom of Speech protections, some material may be restricted. The United States Supreme Court has held repeatedly that obscenity and child pornography are not protected under the First Amendment. The Court has also held that while pornographic material is protected by the First Amendment, it may be regulated as to the time, place, and manner in which it is viewed or displayed. The Federal harmful to minors law has been enjoined by the courts – in other words, it is not in effect. At this time, all harmful to minors laws are state-based.

#### Patron Rights:

Freedom of expression is an inalienable human right and the foundation for self-government. Freedom of expression encompasses the freedom of speech and the corollary right to receive information. These rights extend to minors as well as adults. Libraries and librarians exist to facilitate the exercise of these rights by selecting, producing, providing access to, identifying, retrieving, organizing, providing instruction in the use of, and preserving recorded expression regardless of the format or technology (See *Library Bill of Rights*, “Access to Electronic Information, Services, and Networks”).

In keeping with the fundamental tenets of librarianship to preserve and protect freedom of expression, Library Internet users will be notified immediately, via posting of an appropriate message on the computer screen, if any Internet site is blocked by a technology protection device. If the patron believes this site was blocked in error, or if the patron needs access to this site for research or other lawful purposes, the patron should communicate this need to the senior staff member on duty in the division where the public computer is located. The staff member will immediately and discretely investigate the blocked site(s), and if appropriate under Board policy, allow the patron to access the blocked site. Great care will be taken on the part of Library employees to ensure that constitutionally protected materials are not withheld from any patron for any reason.

#### Legal Definitions:

The U. S. Supreme Court has set the following standard for determining obscenity:

1. Whether the ‘average person applying contemporary community standards’ would find the work, taken as a whole, appeals to the prurient interest;

2. Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
3. Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value (20 U.S.C. Section 9101).

The constitutional definition of obscenity was narrowed by the Supreme Court in 1985, when it wrote that an item was not obscene if it appeals to normal, healthy, sexual desires. To be obscene, material must predominantly appeal to a shameful or morbid interest in nudity, sex, or excretions.

The definition of child pornography is still evolving, but at this time, child pornography is defined as any visual depiction, including any photograph, film video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

1. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
2. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
3. Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct (18 U.S.C. Section 2256; Utah Code Section 76-5b-201).

Pornography does not have a single, legal definition; its identification varies from viewer to viewer.

Pursuant to U.S. Supreme Court rulings, which allow the regulation of pornographic material, the Utah Legislature has created statutes prohibiting the public viewing or display of pornographic material. It is a crime under Utah law to exhibit pornographic material to others, including the displaying of pornographic material in such a way as to make it visible to the public. This means that displaying pornographic material on a public access computer, such as those in the Weber County Library System, and thereby potentially making that material visible to others, is a crime under Utah law.

Under Utah State law, material is legally pornographic only if:

1. The average person in the community finds that the material taken as a whole appeals to, arouses, or is marked by an unusual interest in sex; and
2. The material is plainly offensive in the depiction of nudity, sexual conduct, sexual excitement, sado-masochistic abuse, or excretion; and

3. Taken as a whole, the material does not have serious literary, artistic, political or scientific value. (See *Utah Code* 76-10-1203)

This means that material which the average person in the community would find offensive and lacking serious value other than to appeal to an interest in sex, and which depicts nudity, sexual conduct, sexual excitement, sado-masochistic abuse, or excretion, is pornographic, and may not be displayed or made visible to others, including the public.

The Utah Legislature has also created a statute prohibiting public viewing or display of material that is “harmful to minors.”

Under Utah State law, harmful to minors means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

1. Taken as a whole, appeals to the prurient interest in sex of minors;
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
3. Taken as a whole, does not have serious value for minors. Serious value includes only serious literary, artistic, political or scientific value for minors (Utah Code Section 76-10-1201).

This means that material which appeals to a minor’s prurient interest in sex, which the average adult in the community would find patently offensive with respect to what is suitable for minors, and which taken as a whole does not have serious literary, artistic, political or scientific value for minors is “harmful to minors,” and must be withheld from library patrons under 18 years of age.

The Utah Children’s Internet Protection Act requires the State to withhold funds from any public library that does not use a technology protection measure to block computer access to material that is harmful to minors, regardless of the age of the patron.

Accordingly, the display of materials that are obscene, pornographic, or harmful to minors on any public access Library computer screen, or the printing thereof, is prohibited. Any patron who accesses, displays, or prints materials that are legally obscene, pornographic, or harmful to minors on a Library public access computer may be committing a crime under Utah law, and will be dealt with accordingly.

#### Applying Legal Definitions:

Knowing which materials are obscene or child pornography is difficult, as is knowing when minors are involved and what materials are actually “harmful to minors.” The applicable statutes and laws, together with written decisions of courts that have applied them in actual cases, are the only official guides. Library employees are not in a position to make those decisions for Library users or for citizens generally. Only courts have constitutional authority to determine, in accordance with due process, what materials are obscene, child pornography, or harmful to minors.

### Employee Supervision of Public Internet Computers:

Technology protection measures cannot block public access to all of the obscene and pornographic materials on the Internet, let alone materials that are “harmful to minors.” These commercially produced products either block whole categories of information, block information based on “key words,” or require a company employee to make a judgment call before a site can be accessed. Filter company employees cannot begin to address the billions of pages indexed by the average search engine, let alone the far larger number of pages embedded in the deep Web, the content of which is accessible in direct-query databases. Nor can these companies keep pace with the millions of new Web pages that are posted daily.

While any private company is free to produce and sell a product with an intentionally or unintentionally embedded social, religious, or political bias, a censorware product purchased and installed by the public library has to support the fair and equal access to all points of view. Maintaining equity of access for all patrons, while operating the computer centers under federal and state laws, requires the active intervention of Library employees.

### Day-to-Day Management of Public Internet Computers:

Individuals using the public computers may sign up for sessions of various lengths of time, depending on pre-established administrative guidelines. A patron may not be allocated a second, concurrent session on a computer if another individual is waiting. Staff members will make themselves available to help those working in the center and will “check in” with each patron intermittently during their use of the public access computer. It is important to remember that every employee has a responsibility to help ensure that patrons are using online resources appropriately, while also striving to maintain the patron’s right to privacy.

If an employee notices, or has reports of, an individual accessing inappropriate sites, and in the judgment of the staff member the use is inappropriate to the Library mission and Board policy, s/he should intervene.

Use sign-up information to determine the individual’s name in order to personalize the conversation. Speak with the individual as privately as possible, while maintaining a safe environment. The following is a sample dialogue that could be used.

Employee: *“I’m sorry, Ms. Jones, it appears that what you have accessed is inappropriate. It does not appear that this particular site falls under the umbrella of the Library mission.*

- *The site you have accessed is offensive to others.*
- *Etc.*

*We are glad that you are interested in using our online resources, but I need to have you leave the site you are currently using.*

*I also need to explain that if you continue to access inappropriate sites, you will have to leave the area and not use the Library Internet facilities for the rest of the day.”*

Confirm with the patron that he/she understands and thank them for their time.

General guideline to follow if materials are accessed that appear to be legally pornographic or harmful to minors:

1<sup>st</sup> incident – gentle reminder of the Library mission and Board policy;

2<sup>nd</sup> incident – leave the center for 1 day;

**AFTER INTERVEINING TWICE WITH THE SAME PATRON, CONTACT THE SENIOR PERSON IN CHARGE OF THE DIVISION/BUILDING WHERE YOU ARE WORKING. UNDER THE SUPERVISION OF THIS SENIOR PERSON, PROCEED AS FOLLOWS.**

3<sup>rd</sup> incident – leave the center for 7 days;

4<sup>th</sup> incident – contact the Library Director, Associate Director, an Assistant Director, or the senior person in charge of the Library at the time, who will consider appropriate action including, but not limited to, calling the police and informing the patron that if he/she returns to the Library s/he will be arrested for trespassing.

Please remember, guidelines exist to provide suggested solutions, they do not take the place of an employee’s good judgment. Each situation will be different. Employees should recognize that each individual encounter is a unique event.

Specific guideline to follow if materials are accessed that appear to be obscene or child pornography:

**CONTACT THE SENIOR PERSON IN CHARGE OF THE DIVISION/BUILDING WHERE YOU ARE WORKING. UNDER THE SUPERVISION OF THIS SENIOR PERSON, PROCEED AS FOLLOWS.**

1<sup>st</sup> incident – Print the URL history of the patrons accessing materials that appear to be obscene or child pornography, and save the URL history to a backup storage device.

Patrons 18 years of age and older, who are suspected of accessing obscenity or child pornography, will be taken to a private area to meet with a senior staff member. The police will be called and asked to respond. At a minimum, the patron will be suspended from the computer center for six months, with the right to appeal to the Library director for reinstatement of privileges.

Patrons under 18 years of age who are suspected of accessing obscenity, child pornography, or materials harmful to minors will be taken to a private area, the police called, and the child escorted home to his or her parents.

Library administrators will remind the parents of their responsibility to monitor their child's access to library materials.

2<sup>nd</sup> incident – Follow the procedures detailed for the 1<sup>st</sup> incident, above. The Library Director will seek legal council to determine the proper methodology for seeking a long-term revocation of the individual's Library privileges.

Additional Information and Guidance:

If you have questions or concerns about the Internet centers, or about the system of public ethics Library employees are to use in implementing Board policy, please contact the senior person in charge of the area in which the public computers are located, or the Library Director.

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