I am very pleased to introduce our new column on LIS Scholars at Work, which will feature ongoing research and scholarship by faculty in LIS programs across Canada. Our first column is by Dr. Samuel E. Trosow, Associate Professor jointly appointed to the Faculty of Information and Media Studies and the Faculty of Law at the University of Western Ontario. Sam is currently spending his sabbatical year as the Faculty Scholar in Residence with the Canadian Association of University Teachers in Ottawa. As a lawyer and a librarian, he is uniquely placed to provide insights into many of the complex legal issues facing libraries, including internet filtering.

— Gloria Leckie, column editor

The filtering of public access computers in public libraries has long been controversial. Pressures to limit access to internet content arose in the 1990s when libraries began providing internet access, and librarians have generally defended unfiltered access on intellectual freedom grounds. Filtering has generated more controversy in the U.S. than in Canada, but recent events in London, Ontario, suggest the issue may be heading north of the border.

At its May 2007 meeting, the London Public Library (LPL) Board adopted an Internet Policy Review Project, the purpose of which was "to review the balance between filtered and non-filtered computers to determine an appropriate balance of filtered and non-filtered machines." The management recommendation identified factors to be studied including "an individual's experience in the library in terms of unintentional exposure to visual images not appropriate in a general library setting" and "the steps the library can undertake in order to mitigate risk of exposure to such images for its customers and itself."

The report also indicated that LPL had "received negative comments on an infrequent but regular basis from customers at Central and at Branch locations about these types of incidents," and that LPL's "mission statement and value promise assures customers that we will provide a welcoming environment for all people, such as families and children, and pays attention to the individual's experience in the library." While the stated intent was to experiment with the balance between filtered and non-filtered terminals, the default for the five-month review period was to filter all but a few of LPL's terminals, as well as wireless access. Terminals in the children's areas have been filtered since 2001.

Public opposition to the plan quickly surfaced, and in June two trustees, Gina Barber and Nancy Branscombe, sought to rescind the May action. The chair deferred the matter to the September meeting where there was another staff report and a presentation from the filtering vendor. The motion to rescind was defeated 6-2. In November, despite submissions from CLA and the Faculty of Information and Media Studies at Western, the Board voted 5-4 to continue the project indefinitely.
What distinguishes the London filtering controversy from others is that the impetus for filtering came from LPL management. Throughout the controversy, LPL downplayed the tensions between filtering and intellectual freedom, and the important tradeoffs involved. In other similar situations, librarians have typically opposed filtering demands, and have sought moderation and compromise. For instance, at the Ottawa Public Library in 2003, demands for filtering coming from staff were resisted by management, and a compromise was reached whereby adult users choose a filtered or non-filtered session.

Since blocking access to lawful internet content is a prior restraint of protected expression, how might Canadian courts respond to a challenge of LPL’s filtering under the Charter of Rights and Freedoms? Under the precedents that have arisen in other expression cases, a court would likely find filtering to be a violation of expression rights under Section 2B. The outcome would turn on whether filtering is justified under Section 1 as a reasonable measure “prescribed by law as can be demonstrably justified in a free and democratic society.” In cases involving obscenity, hate speech, and child pornography, Canadian courts have found the expressions as within Section 2B, but that limitations were justified under Section 1.

An initial issue is whether filtering is even a measure prescribed by law. The blocking decision is delegated to a proprietary computer algorithm, and the public lacks access to underlying decision rules about how it works. Filtering also must be justified under the limitations of a four-part test developed by the courts. First, a court considers the importance of the objective of the limiting measure, and must be satisfied it warrants overriding a constitutionally protected right. The objective at LPL was identified as reducing the risk of unintentional exposure of customers to images, on computer screens in the library, that are not appropriate in a public space. If a court finds this justification reasonable, it would go on to the next steps, which consider the means chosen to reach the objective.

The second prong of the test looks for a rational connection between the objective and the limitation; it cannot be arbitrary or capricious. The third prong asks whether there are other reasonable options to satisfy the objective that would have less impact on expression. Finally, a court balances the objective against the means employed to reach the objective for proportionality. LPL’s action would face difficulty under these later stages of analysis. The incidents were admittedly infrequent and could have been dealt with under existing policies (such as space planning or inappropriate behaviour guidelines) and various less restrictive alternatives were suggested to and rejected by the Board. A court would likely find that filtering adult terminals and the wireless environment to be a prior restraint infringing Section 2B of the Charter, which is not justifiable under Section 1.

However, beyond the impact of a legal challenge, there are deeper implications of subsuming questions of intellectual freedom within the rhetoric of customer service. Embracing a strong version of the customer service paradigm, stressing a reactive stance to all public concerns no matter how unrepresentative or unreasonable, cuts at the heart of the meaning of public library service and sets the stage for the erosion of important library values.

Where values of intellectual freedom and customer service collide, the latter may well prevail unless decision-makers have a strong grounding in, and appreciation of, the values of the profession and the overriding importance of intellectual freedom.  

Dr. Samuel E. Trosow is Associate Professor jointly appointed to the Faculty of Information and Media Studies and the Faculty of Law at the University of Western Ontario.

**Notes**

1. An expanded version of this essay with full citations and other links is posted at http://samtrosow.ca/lpl.
2. LPL staff reports are linkable from http://www.londonpubliclibrary.ca/node/2402.
3. Another trustee joined Branscombe and Barber in opposition, but a fourth voted no because she wanted all terminals filtered without exceptions. The adopted measure retains a small number of unfiltered machines.
4. LPL Board members Branscombe and Barber have been awarded the 2008 CLA Award for the Advancement of Intellectual Freedom.

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