

The weight of responsibility

Brendan Scott, Gilbert & Tobin

You have spent a relaxing afternoon talking with one of your friends from work over a coffee. They collect their children who have been sitting quietly in one of the rooms of your house all afternoon. Two weeks later, you find yourself publicly denounced! Could it happen in Australia?

It seems that, while you were talking, your friend's children were reading religious texts you had brought home for research — texts which were offensive to your friend's beliefs. Could you be liable? Should you be liable? Would the answers be any different if the material they had access to: was pornography? depicted violence? expressed political views that your friend disagreed with?

This scenario raises a number of issues. First, is there a general obligation to protect others from seeing or reading things a person disagrees with? Second, if so, is there harm suffered? Finally, who has suffered such harm? and who is responsible?

While the law of torts does not preclude the possibility of damage being suffered purely as a result of 'non-physical' injury, these cases usually involve some form of emotional trauma such as seeing the death of a loved one or which occur as the result of a catastrophic change in a person's lifestyle (for example, the loss of a job coupled with child-rearing responsibilities). Further, real damage would have had to have resulted in the court's eyes in or-

der for a finding in favour of the plaintiff to occur. It would not be sufficient for the material merely to be not in accordance with a parent or guardian's opinion as to the most appropriate manner in which to raise their child.

What would this mean for a librarian? Would it mean that the librarian or the library would be responsible and liable in the event that a child was exposed to 'inappropriate' material? In the pre-internet world, this may not have been so problematical. For example, a child seeking to obtain access to a restricted publication would need to ask for it at the reader's enquiries desk. The relevant librarian would be aware of the general nature of the publication by markings required to appear on it by legislation. They could then decide to either provide or restrict access to that book to the child. However, if the information accessed by the child is on the internet, the game changes. For example, no longer is the child accessing a wad of information (the book) which can be vetted at an initial point prior to hand-over. In this case, the child will bounce around between a large number of information sources. Also, the librarian no longer has the benefit of a physical publication which has previously been classified prior to acquisition. Many, if not most, websites either have not been classified at all or have not been classified in accordance with Australian classification standards. In order to play an equivalent gatekeeper role the librarian would be re-

quired to stand over the child throughout the whole of the surfing session, constantly monitoring their activities. Should a librarian be required to assume this responsibility?

As with most things legal, the United States has been setting the pace with litigation commenced against libraries. Further, legislators in the United States have indicated that they wish to tie continued government funding to libraries to whether the library is keeping inappropriate material away from minors. As legislation is too slow for some people, Jodi and Paul Hoffman have filed suit against the Broward County School Board, for *not putting* content censoring/filtering software on its library internet-connected computers [Broward County School Board: ISBA *Intellectual property section council internet law subcommittee report* 9 April 1998 Compiled by David Loundy]. In another case, the Loudon case, a library is being sued for *putting* filtering software on its computers [<http://www.loudoun.net/mainstream/Library/complaint.htm>]. Clearly libraries in the United States are placed in a difficult position!

However, to return to our denunciation. One of the other questions posed was who is responsible? To extrapolate it further, what obligation would a librarian have to care for a minor placed into their care? This is a difficult question to answer as it will always depend on the facts and circumstances of the case in point. The law of torts says, in effect, that if you should have known better and someone gets hurt, then you must make good that hurt. In relation to supervision of others there is no general duty to control another person. However schools have been held liable for failing to properly supervise the children entrusted to their care. As such, despite the general proposition, a librarian may, in some circumstances, be required to exercise supervision over a child, even though that is not part of their official function.

Ultimately however, if a child is injured or exposed to inappropriate material while within a library, it may be a moot point as to whether the library or librarian has a legal liability. At the very least they will have a political one and the political liability may end up having the most harmful effects in the long term. ■

Text and technology merge at the State Library of Queensland

The State Library of Queensland announces the opening of Office Web providing the latest in computer facilities for the student, home office and small business sectors.

Office Web, located in the State Reference Library contains eight PCs and two Macs, ensuring that clients can now create anything from high-quality desk top publishing documents to tertiary assessments.

Michael Hallam, director of commercial services at the library, said that Office Web represents a strategic alliance between government and private enterprise and is part of the library's ongoing commitment to improving client services and technology in libraries throughout Queensland.

Services available through Office Web include laser printing, scanning of written text and images, CD writing and internet and e-mail access. Office Web also provides office services such as colour copying, faxing, binding and laminating. The service was launched during Australian Library Week 98.