

Q&A: Makerspaces, Media Labs and Other Forums for Content Creation in Libraries

Statement of Purpose: This Q&A can be used as a guide by libraries as they create policies for makerspaces or other content creation forums within their facilities. It is not intended to be a template for such policies but rather a source for answers to questions that are likely to be asked as libraries formulate content creation policies. This document should not be construed as legal advice but may serve as insight as to when a library may need to seek legal advice.

Is a library really an appropriate space for hands on creative activities?

Historically libraries have often included in their functions the creation, as well as the preservation and dissemination, of content in many different formats. Libraries have supported and encouraged scholars, writers, inventors, artists and artisans, and provided study rooms, carrels, meeting, exhibit and performance spaces, as well as tools and equipment for individual and group use.

Providing 3D printers and other tools and technology in makerspaces, tech labs, STEM (Science, Technology, Engineering, and Math) or STEAM (Science, Technology, Engineering, Arts, and Math) labs, media labs, exhibit and performance venues, as well as other physical and virtual spaces for creative endeavors, is only the latest manifestation of the library's natural role in encouraging and facilitating the creativity and ingenuity of its community of users.

How does the public forum concept under the First Amendment apply to makerspaces, media labs and virtual spaces in libraries?

Case law has established that public libraries are designated public forums where the right of library users to access information and ideas in multiple formats is protected by the First Amendment. Public libraries may also provide physical spaces in their buildings, such as meeting rooms and/or display cases, as spaces where members of the community may exercise their First Amendment rights to gather and share information as well as ideas in various ways. When the library opens such spaces for public use, they become designated public forums. An academic and school library would generally be considered a non-public forum.

However if an academic or school library opened a meeting room or other space to public use, then it would be a designated or limited public forum as to that use and as defined by the entity. These libraries exercise greater control over access consistent with their missions. They may limit access to the library to the class of user intended to benefit from the library — e.g., students, faculty, staff, and alumni. However, decisions about access to resources and the removal of materials remain subject to the First Amendment.

Technological innovation has expanded the ability of public, academic and school libraries to provide both physical and virtual spaces where library users have access to technology that allows them to create their own original content in many different formats and to gather to share, discuss and disseminate their original content on many different platforms.

Libraries may establish and equip such physical and virtual spaces as designated sites and platforms for creating, sharing and disseminating original content. Some current examples of such sites and platforms are makerspaces, media labs, social media sites, and print-on-demand services. Such sites and platforms may be limited to library-sponsored or library-related programs; or may be opened for access to events, exhibits, programs and performances sponsored by community groups and organizations; or opened for independent individual

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access and use. When a publicly funded library opens such sites and platforms for general public use, they will be considered a designated or limited public forum.

Are there any libraries to which this does not apply?

The First Amendment applies to federal, state and local governments and their agents, but not to private entities. Public libraries and public schools are considered governmental agents, so they are subject to the First Amendment restrictions on uses of public and limited public forums discussed above. However, private libraries—such as a private school library—are not.

What determines who is eligible to use such spaces in the library?

Every person who uses the library should have an equal opportunity to use all of the library's services. Access to designated forums for creative content should not be abridged or denied because of origin, age, background or views of the user. A library may give a higher priority to a defined community of library users. A publicly funded library may prioritize users who are taxpayers or cardholding members of the library or even limit or exclude users not meeting those criteria. Academic and school libraries may limit eligible users to persons who are students, faculty and staff of the college, university, or school.

Can a library set any kinds of limits on how a public forum it provides is used? Can it penalize misuse of the forum?

A library may set reasonable content-neutral time, place and manner restrictions on the use of the designated public forums for content creation. In a designated public forum, any content-based restrictions on access must meet a strict-scrutiny standard to be deemed constitutional. In other words, the restriction must serve a compelling government interest and be narrowly drawn to achieve that interest.

A library, such as a school or academic library, which is considered a nonpublic forum, may set content-based restrictions on the use of the forum if the restriction is reasonable in light of the mission of the institution and the uses for which it has been designated.

A user who violates the library's policy defining acceptable use of the forum may face consequences on the violations as stated in the policy, including suspending or terminating the right to use the forum (so long as the policy provides this possibility).

What should be addressed in an acceptable use policy?

Any use that violates federal, state, or local law, or library policy or guidelines, constitutes an unacceptable use of the content creation forum. Examples of issues to address in an acceptable use policy include, but are not limited to, the following:

Damaging or otherwise misusing physical or virtual library resources

Behaving in a manner that disrupts the orderly conduct of the physical or virtual forum, prevents other patrons from using library resources, or interferes with library employees performing their duties

Creating or sharing content that is legally defined as obscene or child pornography, or knowingly sharing with minors content that is harmful to minors.

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Creating or sharing content that constitutes physical or virtual harassment of others as long as the library has consulted with legal counsel to be sure that a behavior policy including harassment offers clear guidance to patrons on what the term means and that legal counsel advises that the harassment definition meets constitutional tests.

Transmitting or reproducing copyrighted or patented content without permission from the copyright or patent holder

Hacking, misappropriating, tampering with or damaging the work-in-progress or shared content of other forum users, or redistributing their content without authorization

Intentionally engaging in the distribution of malware or similar malicious software or hardware

Using false identification to mislead others

Using another individual's personally identifiable information without his/her explicit permission

The library's acceptable use policy should clearly state the consequences of violating the policy, including whether their library privileges may be denied or suspended and the procedure for doing so (including notification, penalties, reinstatement, and appeals).

What about costs? Who pays for materials consumed or damaged?

If a library charges cost-recovery fees for consumable materials used by participants in library-sponsored activities, provision should be made to cover fees for those who otherwise could not afford to participate. If a library's policy preclude waiving cost-recovery fees efforts should be made to find a sponsor — such as a "Friends of the Library" organization — to pay the fees. If a library charges cost-recovery fees for loss or damage to library property or resources, these fees need to be clearly stated in the policy, and the library should consider offering alternatives — such as volunteer service — to those who cannot afford the fees.

Who is responsible for preventing misuse and illegal activities?

Each user is personally responsible for appropriate and legal use of library spaces, equipment, hardware and software, Internet access, Web sites, social media and other resources.

Generally, a library is not responsible for the actions of individual users as long as the library conspicuously posts an acceptable use policy that clearly states user responsibilities. In some cases, existing policies that serve as a measure of protection for the library, such as those addressing use of copiers and printers may be broadly enough worded that they include new technology: if not, it may be possible to expand those policies rather than create new ones.

Can a user make items like a gun or sexually explicit images or toys?

While it is possible to create a gun using a 3-D printer, the software required to do so is complex and may be proprietary. Even if a user had access to the software to create parts of a gun, other parts required for it to function could not be created on the printer.

If a library's policy prohibits gun possession in the library then the creation of a gun or gun parts would violate that policy if that policy is in line with state law of gun possession. If state law allows possession of a gun in a library then the library would need to work with its legal counsel to determine if a legal prohibition against creating a gun can be fashioned within state law.

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The same is true of creating sexually explicit images or toys. If a library policy prohibits sexually explicit material in the library then creation of sexual explicit images or toys also violate the rule but the library would need to work with its legal counsel to determine if the prohibition against sexually explicit materials has adequate definition that follows state law as well as constitutional tests.

Does a library's risk of liability increase with makerspaces? What about the librarian's? Makerspaces may include technology such as laser cutters or sewing machines that present danger of physical harm to patrons and library workers and bring new risks of liability to a library and/or individual library employees and volunteers. The institution should employ a full legal and insurance review before it begins using such technology. That review should include all the risks new technology brings including copyright and patent infringement, defects in the technology and, defects or misuse of content created with that technology.

Does a library have a responsibility to vet or approve what is created in a forum it has provided? Libraries are not responsible for monitoring the legality content creators' use of intellectual property or accuracy of content created and/or shared in designated public forums. However, if the library becomes aware that a user is engaging in illegal activity, it may have a legal and/or ethical duty to intervene. In addition, the Library Bill of Rights states: "Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Just so, when libraries provide their users with technology and forums to create and share their own content, the provision of these resources does not constitute an endorsement of the content or the views expressed by the creators, any more than the inclusion of content in the library's collection constitutes an endorsement of the content or the views of its creators.

What rights do users have in what they create?

All users have the right to create constitutionally protected content, so long as it does not violate the rights of others. The ALA Code of Professional Ethics states: "We respect intellectual property rights and advocate balance between the interests of information users and rights holders." Users have the right to maintain the integrity of the content they have created and to be acknowledged as the creator of their content. Libraries should provide content creators with information on how to protect their creations with copyright patent, trademark or areas of law.

What other issues should the library consider before creating makerspaces?

The library should carefully review all licenses it signs for new technology. Remember, once signed, the license controls. The library should also review existing licenses to determine if there are any impacts from the implementation of new technology or processes. The library should also review any existing partnership agreements to determine what, if any, impact new technology may have. The library should also be aware that local building codes may limit makerspace creation or uses. Disability compliance laws should be considered when installing new technology or creating makerspaces.